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No. 749

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

BOARD OF PUBLIC INSTRUCTION OF BROWARD COUNTY, FLORIDA, a public body organized and existing under the laws of the State of Florida; and WILLIAM C. DRAINER, Superintendent of Public Schools of Broward County, Florida, *Petitioners,*

v.

FREDERICK ALLEN and TIMOTHY ALLEN, minors by W. GEORGE ALLEN, father and next friend; and VON D. MIZELL, President of the National Association for the Advancement of Colored People, and all others similarly situated, *Respondents.*

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT AND MOTION TO ADVANCE

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INDEX

Page

Findings of Fact, Conclusion of Law and Final Judgment of April 30, 1970 in the United States District Court, Southern District of Florida, Unreported .. 1a

Opinion Filed August 18, 1970 in the United States Court of Appeals for the 5th Circuit, Not Yet Reported 32a

Order of August 28, 1970 in the United States District Court, Southern District of Florida, Unreported .. 47a

School Superintendent's Implementation Report of August 24, 1970 (Attached to Aforementioned Order of August 28, 1970) 54a

Order of September 4, 1970 in the United States District Court, Southern District of Florida, Unreported 99a

APPENDIX

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

No. 70-31-Civ-TC

FREDERICK ALLEN and TIMOTHY ALLEN, minors, by W. GEORGE ALLEN, father and next friend; and VON D. MIZELL, President of the National Association for the Advancement of Colored People, and all others similarly situated,

Plaintiffs,

v.

BOARD OF PUBLIC INSTRUCTION OF BROWARD COUNTY, FLORIDA, a public body organized and existing under the laws of the State of Florida; and WILLIAM C. DRAINER, Superintendent of Public Schools of Broward County, Florida,

Defendants.

Findings of Fact, Conclusions of Law and Final Judgment

FINDINGS OF FACT

This school desegregation suit was brought by the father of two public school students and by the president of the Broward County Chapter of the National Association for the Advancement of Colored People against the Board of Public Instruction and the School Superintendent of Broward County, Florida, alleging, inter alia, denial of equal protection under the Fourteenth Amendment to the United States Constitution. The defendants operate an urban school system of 116 schools and more than 112,000 students on the Florida "Gold Coast." The school system is growing at a high rate (8.1% from September, 1968, to September, 1969), consistent with the growth of the county, which is said to be the fastest growing major county in the nation. Jurisdiction vests in the court under

Title 28 U.S.C. § 1343(3) and Title 42 U.S.C. §§ 1983 and 1985.

The suit was filed on January 9, 1970, and the first hearing was held on January 16, 1970, on the application of the plaintiffs to restrain the defendants from maintaining a dual system of public schools segregated by race and to compel defendants to formulate and operate a unitary integrated system of public schools.

This is the third such suit filed against the school board in this court, though the two earlier suits resulted in nothing definitive. One, styled Gay v. Board of Public Instruction of Broward County, No. 67-725-Civ-CA, was dismissed on March 10, 1969, by consent of the parties, prosecution of the suit having languished. The other, styled Hattie Hall, etc., v. Board of Public Instruction of Broward County, No. 10,820-Civ, was filed June 16, 1961, and dismissed June 13, 1962.

At the January 16, 1970, hearing in this cause, the defendants admitted and the court found by its order of January 22, 1970, that they were not operating a unitary integrated school system but were operating a dual system of public schools segregated by race. Such dual systems, organized and operated by the states acting through local school boards, were held unconstitutional by the Supreme Court in *Brown* v. *Board of Education,* 1954, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 *(Brown I),* and which were ordered abolished in *Brown* v. *Board of Education,* 1955, 349 U.S. 294, 75 S.Ct. 753, 99 L.Ed. 1083 *(Brown II).*

In *Green* v. *County School Board of New Kent County,* 1968, 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716, the Supreme Court, speaking of the whole school system, stated that to convert from a dual system to a unitary, non-racial system, the racial identification of the schools must be eliminated in six particulars; composition of student bodies, faculty, staff, transportation, extra-curricular activities, and facilities.

The Supreme Court then, in *Alexander* v. *Holmes County Board of Education,* October 29, 1969, 396 U.S. 19, 90 S. Ct. 29, 24 L. Ed. 2d 19, further defined the constitutional standard of a unitary system, against which every school system is to be measured, as one "within which no person is to be effectively excluded from any school because of race or color."

This court then directed the defendants to operate henceforth a unitary school system and to file with the court by February 16, 1970, a comprehensive plan to establish such a system as defined in the cases cited above and in *Singleton* v. *Jackson Municipal Separate School System* (and consolidated cases in banc), 5 Cir., December 1, 1969, 419 F. 2d 1211, as modified by the United States Supreme Court in *Carter* v. *West Feliciana Parish School Board* (and consolidated cases), January 14, 1970, 396 U.S. 290, 90 S.Ct. 608, 24 L.Ed.2d 477.

SCHOOL BOARD PLAN

The school board timely filed its plan (Defendants' Exhibit 1), which was to be totally implemented by June 15, 1970, after the close of the current school year, but with an orientation program, etc., to begin immediately. The plan shows that the board had launched a program in 1968, for completion by 1973, calling for desegregation of all high schools and probably all junior high and middle schools, with the elementary schools to remain as neighborhood schools. All junior highs were to be converted to middle schools, with the ninth grades moving from junior high schools to high schools and the sixth grades from elementary schools to middle schools as space became available.

Building Program. The program was to be activated over a five year period because that time was deemed necessary to complete a $155,000,000 qualitative improvement program of site acquisitions, new school plants, remodeling of existing plants, new equipment, etc. The principal funding source was a $108,600,000 general obligation bond issue

voted by the electorate of the county in 1968. This is said to be the largest single school bond issue ever approved in the southeastern United States. Substantial progress has been made on the building program and completion should be well within the scheduled period.

CURRENT STUDENT POPULATION. The school system is presently composed of 116 schools, eleven being high schools, of which two have all-Black student bodies, 21 are junior highs or middle schools, of which two are all-Black, and 84 are elementary schools, of which 13 are all-Black. In addition to these 17 all-Black schools, five others are 99% or more Black. The students composition is:

	White	*Black*	*Total*	*% Black*
Elementary	43,114	15,309	58,423	26.2
Middle or Junior High	21,953	4,607	26,560	17.3
Senior High	21,456	5,585	27,041	20.7
Totals	86,523	25,501	112,024	22.8

HIGH SCHOOLS. The board plan calls for the elimination of the two all-Black high schools, Blanche Ely and Dillard, and the integration of all remaining high schools with a maximum of 27.4% Black pupils at any high school. For the current year there is only one all-White high school—Plantation High.

MIDDLE/JUNIOR HIGH SCHOOLS. All middle schools and junior high schools are to be desegregated, with the exception of Apollo Middle School which is far removed from Black residential areas. Sixth grade centers would be established at Attucks and Lanier Schools, to pair with Olsen and McNicol Middle Schools, respectively. A maximum of 31.4% Black pupils is proposed at any school, with the sixth grades being transferred to middle schools or left in elementary schools, depending on availability of space. For the current year there are two all-Black and four all-White middle and junior high schools.

ELEMENTARY SCHOOLS. The school board presently operates a neighborhood system of 84 elementary schools, of which 13 have all-Black student bodies and 35 are all-White. Its proposed plan calls for desegregating three of the all-Black schools, with ten remaining all-Black and four others over 90% Black.

INSTRUCTIONAL STAFF. For the current year all schools except three have one or more White teachers, but 42 schools have no Black teachers. The board plan calls for desegregating instructional staffs in every school in the approximate White to Black ratio that they bear to each other in the system as a whole. Each elementary school will have an instructional staff composed of 25% Black and 75% White, and the secondary schools will be composed of 20% Black and 80% White. (Board Plan Addendum #4).

PUPIL REASSIGNMENTS. The pupil transfer policy proposed by the school board has two provisions:

1. Once the initial assignments are made, any student with parental consent may request reassignment to any school within the school system. The request will not be denied for any reason other than lack of capacity in the school to which reassignment is requested. Any student granted reassignment will be responsible for his own transportation.
2. Transportation will be provided for any student granted reassignment from a school in which he is in the racial majority to the nearest school in which he is in the racial minority.

OTHER PROVISIONS. The plan also details a thorough-going orientation program to prepare the instructional staff, pupils, and the public for the desegregation program (Addendum #5). Criteria for establishing faculty and other staff eligibility for transfer between schools brought about by the desegregation program are included (Addendum #6). The current status and projections with respect to transportation (Addendum #8) are included, but they are not in such form as to be readily evaluated, presumably

due to the short time allowed for preparation of the plan. No issue is raised as to transportation. The status of integration in athletics and other activities is included. (Addendum #9).

OBJECTIONS TO BOARD'S PLAN

The court heard objections to the board's plan on March 3, 1970, and granted leave to intervene to attorneys Thomas A. Thomas and Arthur Seppi, who represented certain students and parents of students who objected to limited portions of the board plan. Subsequently, leave to intervene was granted to attorney Edgar G. Hamilton, who objected on behalf of Blanche Ely P.T.A. and others to elimination of Blanche Ely High School.

The plaintiffs objected to many facets of the board plan including (1) phase-out of all-Black Blanche Ely High School and Dillard High School, since the student capacity is needed to reduce overcrowding in adjacent high schools; (2) use of all-Black Attucks and Lanier Middle Schools for sixth grade centers, because each could be more suitably used for the conventional middle school alignment of grades 6, 7 and 8; (3) retention of all-Black and all-White elementary schools as not meeting the unitary standard; (4) reassignment procedures, since they would serve to overcrowd certain schools, increase transportation and frustrate the desegregation process; (5) increased bussing of Black students to predominantly White schools while providing for little bussing of White students to predominantly Black schools, thus showing that if bussing is a problem, it is a Black problem; (6) assignment of faculty on a uniform standard for every school, whereas the faculties of predominantly Black schools should be predominantly Black; (7) delay of implementation of the plan, particularly transfer of faculty, until September, 1970.

The court by its order of March 3, 1970, directed the board to consult with the Florida School Desegregation

Consulting Center, School of Education, University of Miami, Miami, Florida, a federally funded agency under the Civil Rights Act of 1964, in developing additional information by which to measure the Broward County School Desegregation Plan as to its meeting the constitutional standard of a unitary system. The Center was requested to make a report with recommendations to the court designed to meet the unitary standard.

INTERIM IMPLEMENTATION OF PLAN

In the interim the court directed the school board and school superintendent by its order of March 19, 1970, to continue to implement the proposed faculty transfer and orientation plans and to take all reasonable and necessary steps looking to the prompt implementation of an appropriate school desegregation plan for the Broward County schools so that there would be no unnecessary delay in full implementation of the plan once finally approved.

CONSULTING CENTER'S DESEGREGATION STUDY

The Florida School Desegregation Consulting Center's study (Court's Exhibit 1) was timely filed with the court. The professional educators who authored the study expressed the view that the school board plan "makes considerable progress toward desegregation and a unified school system and toward the goal of providing an equal educational opportunity for all children in the system." The Center recommends:

High Schools.

Blanche Ely High School be discontinued as a high school and made a sixth grade attendance center for the Pompano Beach Middle School. As shown by the detailed report (Appendix III of Court's Exhibit 1) the school is deficient in every area except physical education and is not a reasonably good secondary school facility.

Dillard High School not be discontinued but utilized as a desegregated senior high facility in 1970-71, the report indicating it is an adequate high school facility (Appendix IV of Court's Exhibit 1).

MIDDLE SCHOOLS.

Wherever possible the shift be made to the middle school structure (grades 6-8). The board's proposed middle school pairing of Attucks (grade 6) with Olsen (grades 7 and 8) and of Lanier (grade 6) with McNicol (grades 7 and 8) be implemented.

Blanche Ely Sixth Grade Center be established in the present Blanche Ely High School plant for the Pompano Beach middle school attendance area. All sixth grade students be moved to the Center from seven elementary schools (Coleman, Cresthaven, Cypress, Markham, Palmview, Pompano Beach, and Sanders Park), resulting in 455 White students and 334 Black students, or a total of 789 students in the Center, which would be 42% Black.

ELEMENTARY SCHOOLS.

The school system should submit new attendance zones which would eliminate as many all-Black elementary schools as possible. As an alternative, in the event rezoning is not productive, the following was recommended:

Coleman Elementary. To be phased-out, with sixth grade students reassigned to Blanche Ely Sixth Grade Center, and the remaining students reassigned to Pompano Beach, Cypress, Palmview, and Sanders Park by adding portions of Coleman's attendance area to the appropriate other schools.

Pairing. The sixth grade pupils in the remaining all-Black elementary schools be assigned to the appropriate middle schools, and the following schools be paired:

Sanders Park and Palmview attendance areas be combined, grades K-2 attending Palmview, and grades 3-5 attending Sanders Park, each school becoming 62.1% Black.

Drew and Coconut Creek attendance areas be combined, grades K-2 attending Coconut Creek and grades 3-5 attending Drew, resulting in each school becoming 55.4% Black.

Dillard and Lauderdale Manors attendance areas be combined, grades K-2 attending Lauderdale Manors and grades 3-5 attending Dillard, resulting in each school becoming 54% Black.

Larkdale and Lauderhill attendance areas be combined, grades K-2 attending Lauderhill and grades 3-5 attending Larkdale, resulting in each school becoming 58.8% Black.

Lincoln Park and Riverland attendance areas be combined, grades K-2 attending Lincoln Park and grades 3-5 attending Riverland, resulting in each school becoming 57.3% Black.

Sunland Park and North Side attendance areas be combined, grades K-2 attending Sunland Park and grades 3-5 attending North Side, resulting in each school becoming 53.7% Black.

Walker and East Side attendance areas be combined, grades K-2 attending East Side and grades 3-5 attending Walker, resulting in each school becoming 60.9% Black.

Carver Ranches, Lake Forest, and Watkins attendance areas be combined, grades K-1 attending Lake Forest, grades 2-3 attending Carver Ranches, and grades 4-5 attending Watkins, resulting in each school becoming 44.3% Black.

Collins and Dania attendance areas be combined, grades K-2 attending Collings and grades 3-5 attending Dania, resulting in each school becoming 55% Black.

C. A. Moore, Colbert, and Hallandale attendance areas be combined, grades K-1 attending Colbert, grades 2-3 attenidng Hallandale, and grades 4-5 attending C. A. Moore, resulting in each school becoming 49.4% Black.

INSTRUCTIONAL STAFF.

The board plan for desegregation of instructional staff is based on educational factors and teacher-board concerns and follows usual procedures. Provisions should be made for more than one Black administrator in any elementary school. The board should develop an aggressive recruitment and training policy to make available more Black administrators.

TRANSFER POLICY.

The two provisions of the board's plan for reassignment of students be eliminated and the usual majority to minority transfer policy established.

BI-RACIAL COMMITTEE.

A committee be established to review operation of the transportation system, pupil transfer policies and school site selections.

OBJECTIONS TO CENTER'S REPORT

Objections to the Center's recommendations were filed by the defendants school board and school superintendent and by intervenor Thomas, who also filed a separate petition to establish a unitary school system. Hearing on the objections and on the intervenor's petition were combined with the final hearing and was held before the court on April 3, 1970.

The school board objected to the recommendation of the Center that the all-Black elementary schools be desegregated largely through pairing with all-White or predominantly-White schools and stated a preference for the Center's alternate recommendation of rezoning the school's attendance zones. The board expressed the tentative view that most of the Black elementaries could be desegregated by rezoning but that additional time would be needed to prepare such a plan. The board objected to the Center's

recommendation as to all-Black Dillard and Blanche Ely High Schools, but offered to re-examine its position in the light of the Center's recommendations.

Plaintiffs made no objection to the report of the Center and particularly approved the pairing plan for desegregation of the Black elementary schools.

Intervenors Thomas objected to the Center's pairing and other pupil desegregation recommendations and urged adoption of a neighborhood school system subject to majority to minority transfers. The plaintiffs expressed the view that adoption of such a plan would result in little desegregation and would not establish a unitary system.

Intervenors Grant, represented by attorney Arthur Seppi, approved generally of the school board plan and sought minor boundary changes in an attendance area. The school board indicated agreement and that the adjustments would present no substantial problem:

Attorney Edgar Hamilton, representing educators and parents in the area of Blanche Ely High School, expressed their desire to have that school remain as a high school.

The court then directed the school board to furnish additional information, including new pupil attendance areas designed to desegregate the all-Black elementary schools.

AMENDMENTS TO SCHOOL BOARD PLAN

Amendments (Defendants' Exhibits 2 and 3) to the school board plan of February 16, 1970, were subsequently filed in response to the court's direction, though the amendments were not specifically recommended by the board. These amendments provide:

High Schools.

Dillard High School is retained for the 1970-71 school year as a desegregated high school by expanding the boundaries of the present attendance area. Only students in

grades 9 and 10 from the expanded attendance area will attend Dillard in 1970-71, students in grades 11 and 12 to remain in the high schools which they are now attending.

MIDDLE SCHOOLS.

Lanier and McNichol, originally paired, have been changed to complete middle schools by separating the attendance areas.

ELEMENTARY SCHOOLS.

Changes in boundaries of the all-Black elementary schools result in desegregating most of these schools. The attendance areas of the remaining all-Black elementaries are surrounded by other Black attendance areas, or by major traffic impediments (railroads, busy highways).

REASSIGNMENT PROCEDURES.

1. Any pupil, with parental consent, shall have the right to transfer from a school at which his race is in the majority to the next nearest school at which his race is in the minority and the board shall furnish free transportation provided the distance involved meets state transportation statutes.

2. Other reassignment requests will be considered providing the request does not involve the transfer of a pupil in which his race is in the minority to a school in which his race is in the majority.

OTHER.

The board will submit nominees for a bi-racial committee for site acquisition and school construction.

Administrators will be assigned to elementary schools without regard to race.

An aggressive program of recruiting and training Black administrators for the central office staff will be instituted.

A UNITARY SYSTEM

Measured against the frame of reference established by the cases earlier cited, and bearing in mind that each school system must be considered separately on its own facts, it is apparent that the school board plan establishes a unitary system of public schools in all respects, except as to (1) a portion of the students desegregation plan, (2) the pupil reassignment provisions, and (3) certain limitations on Black administrators.

The board's plan to desegregate its instructional staff in each school in the same approximate proportion as White staff members bear to Blacks in the whole system, which is objected to by plaintiffs, comports with the requirements of law. *Singleton* v. *Jackson Municipal Separate School District, supra.*

STUDENTS

HIGH SCHOOLS.

Dillard. The proposed closing of this high school and transferring the students to Fort Lauderdale, Northeast, Plantation, and Stranahan High Schools, all of which are facing extended sessions to relieve overcrowding in 1970-71, places an unnecessary burden on these schools. Dillard is an adequate high school facility as shown by the study of the Florida School Desegregation Consulting Center (Appendix IV of Court's Exhibit 1). The April 13, 1970, amendments to the school board plan (Defendant's Exhibit 2) show that Dillard will provide for 2,038 students, 1160 Black and 878 White, as a desegregated facility by expanding the attendance area. This use will reduce transportation requirements. The proposal to close Dillard appears to be based solely on the reluctance of the school board to require White students to attend school in Black areas. This is not a sufficient reason within the context of the factual situation here presented. It follows that Dillard should be operated as a desegregated high school for 1970-71.

Blanche Ely. This is *not* a reasonably good high school facility, being deficient in every area, excepting physical education (Appendix III of Court's Exhibit 1). Adjacent high scools are not overcrowded and can adequately accommodate the Blanche Ely students. Therefore the board's plan to eliminate Blanche Ely as a secondary school is acceptable. The board has plans to build a new high school to serve the area. For the 1970-71 school year the Blanche Ely plant will be used to house Coleman Elementary students.

With Dillard operated as a desegregated facility, all high school students will be attending integrated schools in 1970-71.

MIDDLE/JUNIOR HIGH SCHOOLS.

Blanche Ely Sixth Grade Center. The proposed use for the Blanche Ely high school plant in the Desegregation Consulting Center study, and also in the school board amendments of April 13, 1970, is as a sixth grade center, though the boundaries in the two plans vary in certain details, and would take sixth grade students from the Pompano Beach Junior High School attendance area. This plan calls for a substantial increase in transportation and additional walking of students and does not appear necessary since there is sufficient space in the respective elementary schools to retain the sixth grades. The school board plans to build a suitable middle school for the Pompano Beach area to house the sixth, seventh and eighth grades, since Pompano Beach Junior High School is inadequate both as to the condition of the school and as to overcrowding.

If the sixth grade students are left in their respective elementary schools (Coleman, Cresthaven, Cypress, Markham, Palmview, Pompano Beach, Sanders Park), all will be in desegregated schools, though the percentage of Black students will vary substantially. If the sixth grade students were moved to a center as proposed, the center by its nature would "racially balance" the sixth grades. However,

no court whose decisions are binding on this court have included "racial balancing" in its definition of a unitary school system. It is the court's function to require the establishment of a school system which meets the constitutional standard, and there it ends. If the schools are to be racially balanced to stabilize racial composition of the schools and the neighborhoods they serve, then this is a consideration for the people of the community acting through their school boards and other units of local and state government.

Lanier and McNicol. The board amendments of April 13, 1970, eliminate the pairing of these schools and establish complete middle schools in each by changing the boundaries of the attendance areas they serve. Under either plan, the schools are desegregated. Since both have adequate facilities for middle schools (Appendix IV of Court's Exhibit 1), and since the pairing arrangement would call for more walking and more transportation, it is desirable to continue to operate them as middle schools.

Attucks and Olsen. Since Attucks Junior High is a substandard facility when used as a complete junior high or middle school (Appendix V of Court's Exhibit 1), it is left in a "paired" arrangement with Olsen. The board plans to convert Attucks to other uses when a suitable middle school is built.

ELEMENTARY SCHOOLS.

Using the school board plan as amended, it is possible to desegregate all Black elementary schools except four: Larkdale, Lincoln Park, C. A. Moore, and Walker. These schools are to remain with all-Black students bodies because they are located in the heart of all-Black neighborhoods. Expansion of their attendance areas in almost any direction would result in more Black students and no White students, although traffic barriers (railroads, busy throughfares) are a factor in limited instances, as will appear more fully by reference to the school board plan and amendments (Defendants' Exhibits 1, 2 and 3). In some instances the result

would be to segregate other schools. The high population density of the Black neighborhoods surrounding these segregrated schools and the near capacity status of student bodies of most of the schools, enormously complicates rezoning of attendance areas to effect integration.

The only alternatives to leaving these schools segregated are (1) transport or "walk in" students from non-contiguous or distant areas; or (2) "pairing" an all-White school with an all-Black school, that is, by combining the attendance areas of the "paired" schools and sending all students in certain grades to one of the schools and all students in the other grades to the other school. In some instances "grouping" of three or more schools is resorted to, rather than "pairing."

It is difficult to justify the removal of young students to distant areas for the sole purpose of integrating a school. "Pairing" or "grouping" of schools also involves the same elements of additional transportation or "walking in." The same principles apply to attempts to integrate more Blacks into predominantly White schools. The time, inconvenience, and expense involved, as well as the safety factor, are all relevant to the resolution of the problem.

The three elementary schools being closed, Braithwaite, B. F. James, and Coleman (moved to Blanche Ely facility) all are housed in sub-standard plants and closing them also facilitates the desegregation program.

The school board has stated that the elementary schools were operated on a neighborhood plan and that they wished to continue to operate them as neighborhood schools as defined by the case of *Ellis* v. *Board of Public Instruction of Orange County, Florida,* 5 Cir., February 17, 1970, ... F.2d ... (No. 29124). The *Ellis* opinion by Circuit Judge Bell carefully limited the applicability of the principles there delineated to the particular facts of the case. It held that the neighborhood system would require that attendance area boundary lines be drawn equi-distant between the schools

and that all students must be assigned to the school nearest their home, without variances and limited only by the capacity of the school, and then to the next nearest school. The result of strict adherence to the equi-distant formula in Orange County was that eight of the eleven all-Black schools were desegregated.

But in Broward County many school residential areas have been given unusual shapes for the purpose of desegregating the schools. No attempt has been made to follow the Orange County equi-distant boundary formula. To do so would result in re-segregation in many instances. The equi-distant formula is acceptable as an aid in establishing a unitary system, where the result is desegregation, but not otherwise. "The only school desegregation plan that meets constitutional standards is one that works," as stated with emphasis by the Fifth Circuit in *United States* v. *Jefferson County Board of Education,* 5 Cir. 1966, 372 F.2d 836, 847 (Jefferson I), in holding that school boards could not rely on "freedom of choice" to establish a unitary system where it was shown that freedom of choice did not result in significant desegregation.

INSTRUCTIONAL STAFF.

The board's plan calling for proportional assignment of instructional staff in every school in the same approximate White to Black ratio that Whites bear to Blacks in the whole system is in accordance with the case law of this circuit and is approved.

PUPIL REASSIGNMENT.

The provisions proposed in the board's amendments of April 13, 1970, are designed to effectively aid in desegregation. They are:

1. Any pupil, with parental consent, shall have the right to transfer from a school at which his race is in the majority to the next nearest school at which his race is in the minority and the board shall furnish free

transportation provided the distance involved meets state transportation statutes.

2. Other reassignment requests will be considered providing the request does not involve the transfer of a pupil in which his race is in the minority to a school in which his race is in the majority.

BLACK ADMINISTRATORS.

The new provisions for Black administrators are satisfactory. They are:

Administrators will be assigned to elementary schools without regard to race.

Broward County will institute an aggressive program of recruiting and training Black administrators for the central office staff.

OTHER PROVISIONS.

The board's plan in its other provisons appears to be in accordance with accepted educational procedures and is approved.

RESULTS ACHIEVED

In the plan heretofore outlined under "A Unitary System" there will be 3,277 Black students, in four elementary schools, attending segregated schools, out of 26,685 Black students in the whole system. This constitutes 12.3% of the Black students attending segregated schools and 87.7% attending desegregated schools. There are seven other elementary schools where the student bodies are 92% or more Black. Although student bodies composed of 8% or less Whites may be minimal desegregation, it is consistent with the desegregation achieved under the equi-distant formula which was approved on February 17, 1970, by the Fifth Circuit in *Ellis* v. *Orange County, supra,* (See Appendix II of *Ellis,* and appears no less acceptable when achieved through the plan here used. It is not the plan but the results that count.

There will be one all-White middle school and 39 all-White elementary schools remaining. This is acceptable in a unitary system since it is based on all-White residential patterns and the preponderantly White population.

Appendix I attached presents a school by school analysis of the projected student attendance by race for 1970-71, as adjusted by the requirements of this order, as well as showing the grades comprising each school, building capacities, etc. The figures used for 1970-71 are approximate, based on current figures adjusted for expected growth.

The majority to minority transfer provision and review by the Bi-racial Committee in the areas of school site selection, pupil transfer, and transportation are designed to assure further desegregation in the future.

A Bi-racial Committee composed of twelve members, six White and six Black, should be appointed by the court to review the operation of majority to minority pupil transfer rule, the transportation system, and selection of school sites. The Committee is authorized to hold hearings and make recommendations to the school board in connection with these activities. The chairmanship shall alternate annually between a White chairman and a Black chairman. The plaintiffs and the defendants shall each submit to the court within ten days at least six names of nominees for the committee.

CONCLUSION OF LAW

The plan outlined in the section of this opinion headed "A Unitary System," including Appendix I, constitutes a unitary public school system for the Broward County, Florida, school district.

FINAL JUDGMENT

It is ORDERED and ADJUDGED that:

1. The Board of Public Instruction of Broward County, Florida, and William C. Drainer, Superintendent of Public Instruction, and his successors in office, are permanently

enjoined from operating a dual system of public schools segregated by race, and shall henceforth operate a unitary school system as described in the section of the foregoing Findings of Fact headed "A Unitary System," (pages 14 to 20). The boundaries of the student attendance areas shall be as described in the School Board Plan as amended (Defendants' Exhibits 1, 2 and 3).

2. The transfer of instructional staff and students shall be made after the close of the current school year, June 17, 1970, and shall be effective for the summer session of 1970 and thereafter.

3. The separate petitions of the several intervenors are hereby denied, except as the relief therein sought may be included in the over-all plans herein approved.

4. The court retains jurisdiction of the cause and the parties for the purpose of ensuring that the plan here adopted is carried out and the school system operated consistent with the requirements of the United States Constitution.

DONE and ORDERED at Miami, Florida, this 30th day of April, 1970.

/s/ Ted Holst
United States District Judge

BROWARD COUNTY BOARD OF PUBLIC INSTRUCTION
1320 Southwest 4th Street
Fort Lauderdale, Florida

HIGH SCHOOLS

ALL CORRECTIONS THRU APRIL 27, 1970

STUDENT INTEGRATION PRESENT AND PROJECTED

HIGH SCHOOLS

SCHOOL	Present 1969-1970					Projected 1970-1971					NORMAL CAPACITY	MAXIMUM CAPACITY	PORTABLES NEEDED
	Grades	Negro	White	Total	% Negro	Grades	Negro	White	Total	% Negro			
NORTH AREA													
Blanche Ely	9-12	1,909	0	1,909	100%						1,028		0
Deerfield Beach						9-11	837	1,790	2,627	31.9%	2,352	3,998	0
Pompano Beach	10-12	222	2,806	3,028	7.3%	9-12	733	2,470	3,203	22.9%	2,514	4,274	0
Sub-Total		2,131	2,805	4,937	43.1%		1,570	4,260	5,830	26.9%	5,894	8,272	0
CENTRAL AREA													
Dillard	9-12	1,749	0	1,749	100%	9-12	1,160	878	2,038	56.9%	1,280		
Fort Lauderdale	10-12	168	2,006	2,174	7.7%	9-12	401	2,632	3,033	13.2%	1,847	3,140	2
Northeast Northeast	9-12	76	2,807	2,883	2.6%	9-12	80	2,790	2,870	2.8%	2,410	4,097	7
Nova Nova	9-12	169	2,715	2,884	5.9%	9-12	393	1,741	2,134	18.4%	1,800	3,000	0
Plantation Plantation	9-12	0	2,922	2,922	0%	9-12	399	3,594	3,993	10.0%	2,351	3,997	3
Stranahan Stranahan	10-12	416	2,253	2,669	15.6%	9-12	650	3,124	3,774	17.2%	2,609	4,435	0
Sub-Total		2,578	12,703	15,281	16.9%		3,083	14,759	17,842	17.3%	12,297	18,669	12

21a

BROWARD COUNTY BOARD OF PUBLIC INSTRUCTION
1320 Southwest 4th Street
Fort Lauderdale, Florida

STUDENT INTEGRATION PRESENT AND PROJECTED

February 11, 1970

HIGH SCHOOLS

SCHOOL	Present 1969-1970					Projected 1970-1971					NORMAL CAPACITY	MAXIMUM CAPACITY	PORTABLE NEEDED
	Grades	Negro	White	Total	% Negro	Grades	Negro	White	Total	% Negro			
SOUTH AREA													
Hollywood Hills	9-12	270	1,931	2,201	12.3%	9-12	478	2,667	3,145	15.2%	2,000	3,400	0
McArthur	9-12	310	2,215	2,525	12.3%	9-12	170	2,747	2,917	5.8%	2,219	3,160	1
Miramar	0	0	0	0	0%	9-11	320	2,079	2,399	13.3%	2,352	3,998	0
South Broward	10-12	296	1,801	2,097	14.1%	9-12	487	2,239	2,726	17.9%	1,937	3,293	0
Sub-Total		876	5,947	6,823	12.8%		1,455	9,732	11,187	13.0%	8,508	13,851	1
TOTAL HIGH SCHOOLS		5,585	21,456	27,041	20.7%		6,108	28,751	34,859	17.5%	26,699	40,792	13

BROWARD COUNTY BOARD OF PUBLIC INSTRUCTION
1320 Southwest 4th Street
Fort Lauderdale, Florida

MIDDLE SCHOOLS

ALL CORRECTIONS THRU APRIL 27, 197

STUDENT INTEGRATION PRESENT AND PROJECTED

MIDDLE OR JUNIOR HIGH SCHOOLS

SCHOOL	Present 1969-1970					Projected 1970-1971					NORMAL CAPACITY	MAXIMUM CAPACITY	PORTABLE NEEDED
	Grades	Negro	White	Total	% Negro	Grades	Negro	White	Total	% Negro			
NORTH AREA													
Deerfield Beach	7-9	387	1,241	1,628	23.8%	6-8	501	1,134	1,635	30.6%	1,401	1,821	0
Margate	7-9	7	857	864	0.9%	6-8	318	866	1,184	26.9%	1,027	1,335	0
Pompano Beach	7-9	34	1,446	1,480	2.3%	7-8	292	1,124	1,416	20.6%	1,282	1,666	0
Rickards	6-8	4	1,192	1,196	0.3%	6-8	299	1,400	1,699	17.6%	1,649	2,143	0
Sub-Total		432	4,736	5,168	8.4%		1,410	4,524	5,934	23.7%	5,359	6,965	0
CENTRAL AREA													
Everglades	7-8	1,289	5	1,294	99.6%	6-8	244	892	1,136	21.5%	1,285	1,644	0
Lauderdale Lakes	6-8	0	1,148	1,148	0%	6-8	362	1,275	1,637	22.1%	1,649	2,143	0
Lauderhill	6-8	1	1,167	1,168	0.1%	6-8	358	938	1,296	27.6%	1,649	2,143	1
New River	7-9	0	1,272	1,272	0%	6-8	321	1,068	1,389	23.1%	1,039	1,351	0
Nova	7-8	76	1,049	1,125	6.8%	7-8	151	986	1,137	13.3%	1,200	1,560	0
Parkway	6-9	957	442	1,399	68.4%	6-8	318	1,099	1,417	22.4%	1,540	2,002	0
Plantation	6-8	2	1,119	1,121	0.2%	6-8	324	1,313	1,637	19.8%	1,649	2,143	0
Rogers	7-9	208	1,474	1,682	12.4%	6-8	616	953	1,569	39.3%	1,334	1,812	0

Appendix I(b)

BROWARD COUNTY BOARD OF PUBLIC INSTRUCTION
1320 Southwest 4th Street
Fort Lauderdale, Florida

STUDENT INTEGRATION PRESENT AND PROJECTED

February 11, 1970

MIDDLE OR JUNIOR HIGH SCHOOLS

SCHOOL	Present 1969-1970					Projected 1970-1971					NORMAL CAPACITY	MAXIMUM CAPACITY	PORTABLES NEEDED
	Grades	Negro	White	Total	% Negro	Grades	Negro	White	Total	% Negro			
Sunrise	7-9	115	2,105	2,220	5.2%	6-8	445	1,331	1,776	25.1%	1,821	2,718	0
Sub-Total		2,648	9,781	12,429	21.3%		3,139	9,855	12,994	24.2%	13,166	17,516	1
SOUTH AREA													
Apollo	6-8	0	905	905	0%	6-8	0	1,588	1,588	0%	1,649	2,143	0
Attucks	6-9	482	0	482	100%	6	194	611	805	24.0%	894	1,162	0
Driftwood	7-9	0	1,199	1,199	0%	6-8	20	1,587	1,607	1.2%	1,535	1,995	0
Hallandale	7-9	61	823	884	6.9%	6-8	184	691	875	21.0%	725	945	0
Lanier	7-9	852	0	852	100%	6-8	262	491	753	34.8%	827	1,075	0
McNicol	7-9	86	1,142	1,228	7.0%	6-8	329	764	1,093	30.1%	1,094	1,422	0
Olsen	7-9	44	1,566	1,610	2.7%	6-8	268	1,086	1,354	19.8%	1,334	1,734	0
Perry	7-9	2	1,801	1,803	0.1%	7-8	285	1,130	1,415	20.1%	1,560	2,028	0
Sub-Total		1,527	7,436	8,963	17.0%		1,542	7,948	9,490	16.2%	9,618	12,504	0
TOTAL		4,607	21,953	26,560	17.3%		6,091	22,327	28,418	21.4%	28,143	36,985	1

BROWARD COUNTY BOARD OF PUBLIC INSTRUCTION
1320 Southwest 4th Street
Fort Lauderdale, Florida

ELEMENTARY

ALL CORRECTIONS THRU APRIL 27, 19:

STUDENT INTEGRATION PRESENT AND PROJECTED

ELEMENTARY

SCHOOL	Present 1969-1970					Projected 1970-1971					NORMAL CAPACITY	MAXIMUM CAPACITY	PO
	Grades	Negro	White	Total	% Negro	Grades	Negro	White	Total	% Negro			
NORTH AREA													
Braithwaite	1-6	464	0	464	100%		0	0	0	0	180	510	
Charles Drew ✓	1-6	986	0	986	100%	1-6	1,014	17	1,031	98.3%	660	1,050	
Coconut Creek ✓	1-6	21	745	766	2.7%	1-5	10	689	699	1.4%	720	720	
Coleman ✓	1-6	493	0	493	100%	1-6	601	25	626	96.0%	270	570	
Cresthaven	1-6	29	589	618	4.7%	1-6	0	705	705	0%	720	720	
Cypress	1-6	0	703	703	0%	1-6	0	725	725	0%	720	720	
Deerfield Beach	1-6	95	650	745	12.8%	1-5	213	487	700	30.4%	630	840	
Deerfield Park ✓	K-6	502	0	502	100%	1-5	562	145	707	79.4%	480	540	
Floranada	1-5	0	824	824	0%	1-5	0	837	837	0%	720	960	
Elementary "A"	0	0	0	0	0%	1-5	114	159	273	41.7%	0	0	
Margate	1-6	0	788	788	0%	1-5	0	682	682	0%	720	720	
Markham	1-6	523	62	585	89.0%	1-6	536	60	596	89.9%	600	630	
McNab	1-6	0	618	618	0%	1-6	0	725	725	0%	720	720	
Norcrest	1-6	0	1,044	1,044	0%	1-6	0	749	749	0%	720	1,020	

25a

Appendix I(a)

BROWARD COUNTY BOARD OF PUBLIC INSTRUCTION
1320 Southwest 4th Street
Fort Lauderdale, Florida

STUDENT INTEGRATION PRESENT AND PROJECTED

ELEMENTARY

February 11, 1970

SCHOOL	Present 1969-1970					Projected 1970-1971					NORMAL CAPACITY	MAXIMUM CAPACITY	POP
	Grades	Negro	White	Total	% Negro	Grades	Negro	White	Total	% Negro			
North Andrews Gardens	1-6	41	1,043	1,084	3.8%	1-6	40	937	977	4.1%	720	1,080	
Palmview ✓	1-6	107	479	586	18.2%	1-6	201	483	684	29.3%	720	720	
Pompano Beach ✓	1-6	15	837	852	1.8%	1-6	20	663	683	2.9%	720	900	
Sanders Park ✓	1-6	853	2	855	99.7%	1-6	666	48	714	93.2%	720	900	
Tedder	1-6	0	733	733	0%	1-5	0	628	628	0%	720	720	
Sub-Total		4,129	9,117	13,246	31.2%		3,977	8,764	12,741	31.2%	11,460	14,040	
CENTRAL AREA													
Bayview	1-6	0	535	535	0%	1-5	0	459	459	0%	450	570	
Bennett	1-6	4	884	888	0.5%	1-6	0	700	700	0%	720	870	
Broadview	1-6	0	658	658	0%	1-5	0	704	704	0%	720	810	
Broward Estates	1-5	904	89	993	91.0%	1-6	779	78	857	90.8%	720	990	
Castle Hill	1-6	0	550	550	0%	1-5	85	652	737	11.5%	720	720	
Croissant Park	1-6	0	779	779	0%	1-5	0	550	550	0%	720	810	
Dillard	1-6	996	2	998	99.7%	1-6	982	3	985	99.6%	840	1,020	
East Side ✓	1-6	1	496	497	0.2%	1-5	88	453	541	16.2%	450	510	

BROWARD COUNTY BOARD OF PUBLIC INSTRUCTION
1320 Southwest 4th Street
Fort Lauderdale, Florida

STUDENT INTEGRATION PRESENT AND PROJECTED

Elementary

February 11, 1970

SCHOOL	Present 1969-1970					Projected 1970-1971					NORMAL CAPACITY	MAXIMUM CAPACITY	PC
	Grades	Negro	White	Total	% Negro	Grades	Negro	White	Total	% Negro			
Edgewood	1-6	3	489	492	0.6%	1-5	0	398	398	0%	540	600	
Harbordale	1-6	0	378	378	.0%	1-5	0	333	333	0%	300	420	
Hortt ✓	1-6	0	380	380	.0%	1-5	0	286	286	0%	360	390	
Larkdale	1-6	1273	0	1273	100.0%	1-6	1054	0	1054	100.0%	720	1320	
Lauderdale Manors ✓	1-6	20	933	953	2.1%	1-5	0	664	664	0%	780	930	
Lauderhill ✓	1-5	1	650	651	0.1%	1-5	125	742	867	14.4%	720	760	
Lincoln Park ✓+	1-6	797	0	797	100.0%	1-5	892	0	892	100.0%	480	900	
Lloyd Estates	1-6	52	450	502	10.4%	1-6	55	607	662	8.3%	420	570	
Meadowbrook	1-6	0	482	482	0%	1-5	0	402	402	0%	420	510	
Mirror Lake	1-5	0	500	500	0%	1-5	0	568	568	0%	720	720	
North Fork ✓	1-6	621	0	621	100.0%	1-6	162	231	393	41.2%	720	720	
North Side ✓	1-6	39	633	672	5.8%	1-5	112	550	662	16.9%	690	690	
Oakland Park ✓	1-6	63	369	432	14.9%	1-6	66	410	476	13.8%	390	855	
Oriole	1-6	0	684	684	0%	1-5	0	524	524	0%	0	0	
Peters	1-5	0	494	494	0%	1-5	0	664	664	0%	720	720	

BROWARD COUNTY BOARD OF PUBLIC INSTRUCTION
1320 Southwest 4th Street
Fort Lauderdale, Florida

STUDENT INTEGRATION PRESENT AND PROJECTED

February 11, 1970

ELEMENTARY

SCHOOL	Present 1969-1970					Projected 1970-1971					NORMAL CAPACITY	MAXIMUM CAPACITY	PORTABLE NEED
	Grades	Negro	White	Total	% Negro	Grades	Negro	White	Total	% Negro			
Pine Ridge	1-6	0	525	525	0%	1-5	0	514	514	0%	480	540	0
Plantation ✓	1-5	1	643	644	0.2%	1-5	86	643	729	11.7%	600	630	4
Plantation Park ✓	1-6	0	1,028	1,028	0%	1-6	0	1,092	1,092	0%	720	1,020	2
Riverland	1-6	0	699	699	0%	1-5	125	566	691	18.0%	720	720	0
Rock Island ✓	1-6	847	4	851	99.5%	1-6	642	50	692	92.7%	450	870	0
Sphal Palm	1-6	800	17	817	97.9%	1-6	632	25	657	9	720	720	0
Sunland Park ✓	1-6	671	1	672	99.8%	1-6	605	127	732	82.7%	720	720	0
Sunset	1-6	0	700	700	0%	1-5	0	583	583	0%	720	720	0
Stephen Foster	1-6	0	515	515	0%	1-5	0	422	422	0%	480	510	0
Tropical						1-6	0	0	0	0%	0	0	0
Village ✓	1-5	0	705	705	0%	1-5	0	628	628	0%	720	720	0
Walker ✓ +	1-6	751	0	751	100%	1-6	733	0	733	100.0%	720	750	1
Westwood Heights	1-6	3	717	720	0.4%	1-5	184	595	779	23.6%	720	750	1
Wilton Manors	1-6	2	704	706	0.3%	1-5	0	553	553	0%	720	810	0
Sub-Total		7,849	16,693	24,542	32.0%		7,407	15,776	23,183	32.0%	21,900	26,025	32

BROWARD COUNTY BOARD OF PUBLIC INSTRUCTION
1320 Southwest 4th Street
Fort Lauderdale, Florida

STUDENT INTEGRATION PRESENT AND PROJECTED

February 11, 1970

ELEMENTARY

SCHOOL	Present 1969-1970					Projected 1970-1971					NORMAL CAPACITY	MAXIMUM CAPACITY	PORT HE
	Grades	Negro	White	Total	% Negro	Grades	Negro	White	Total	% Negro			
SOUTH AREA													
A. C. Perry	1-6	0	647	647	0%	1-6	0	658	658	0%	720	720	
Bethune ✓	1-5	559	0	559	100%	1-5	294	293	587	50.0%	600	630	
Boulevard Heights ✓	1-6	0	782	782	0%	1-5	0	793	793	0%	720	1,200	
Carver Ranches ✓	1-6	955	0	955	100%	1-6	663	37	700	94.7%	720	990	
Colbert ✓	1-6	2	737	739	0.3%	1-5	148	474	622	23.7%	720	1,020	
Collins ✓	1-6	447	0	447	100%	1-5	409	71	480	85.2%	660	660	
Cooper City ✓	1-6	5	521	526	0.9%	1-5	6	510	516	1.1%	0	510	
Dania ✓	1-6	20	852	872	2.3%	1-5	156	395	551	28.3%	780	870	
Davie	1-6	41	518	559	7.3%	1-5	40	514	554	7.2%	530	560	
Driftwood ✓	1-6	0	895	895	0%	1-5	0	779	779	0%	720	900	
Eisenhower ✓	1-6	38	672	710	5.4%	1-5	45	577	622	7.2%	720	720	
Fairway	1-6	0	610	610	0%	1-6	0	700	700	0%	720	720	
Hallandale ✓	1-6	91	597	688	13.2%	1-5	120	402	522	22.9%	620	710	
Hollywood Central	1-6	1	719	720	0.1%	1-5	0	657	657	0%	720	1,350	

298

BROWARD COUNTY BOARD OF PUBLIC INSTRUCTION
1320 Southwest 4th Street
Fort Lauderdale, Florida

STUDENT INTEGRATION PRESENT AND PROJECTED

February 11, 1970

ELEMENTARY

SCHOOL	Present 1969-1970					Projected 1970-1971					NORMAL CAPACITY	MAXIMUM CAPACITY	PORTABI NEEDI
	Grades	Negro	White	Total	% Negro	Grades	Negro	White	Total	% Negro			
Hollywood Hills	1-6	0	833	833	0%	1-5	0	673	673	0%	720	840	0
Hollywood Park	1-5	0	674	674	0%	1-5	0	694	694	0%	720	720	0
James	1-6	270	0	270	100%		0	0	0	0%	210	300	0
Lake Forest ✓	1-6	0	629	629	0%	1-5	137	625	762	17.9%	600	630	0
Miramar	1-6	0	717	717	0%	1-6	0	731	731	0%	720	720	1
Moore, C. A. ✓	1-6	650	0	650	100%	1-5	598	0	598	100%	720	720	0
Nova Blanche Forman ✓	1-6	13	681	694	0.2%	1-5	17	603	620	2.7%	720	720	0
Oakridge	1-6	0	684	684	0%	1-5	117	523	640	18.2%	720	750	0
Orange-Brook	1-6	150	634	784	19.1%	1-6	134	547	681	19.6%	720	780	0
Pembroke Pines ✓	1-6	0	1,081	1,081	0%	1-6	0	968	968	0%	720	1,110	0
Sheridan Hills	1-6	0	235	235	0%	1-5	0	605	605	0%	0	0	21
Sheridan Park	1-6	0	781	781	0%	1-5	0	655	655	0%	720	750	0
Stirling	1-6	2	714	716	0.3%	1-5	3	631	634	0.5%	720	960	0
Sunshine	1-6	0	963	963	0%	1-6	0	995	995	0%	480	960	0
Watkins ✓	1-6	84	521	605	13.9%	1-6	215	525	740	29.0%	720	750	1

30a

BROWARD COUNTY BOARD OF PUBLIC INSTRUCTION
1320 Southwest 4th Street
Fort Lauderdale, Florida

STUDENT INTEGRATION PRESENT AND PROJECTED

February 11, 1970

ELEMENTARY

SCHOOL	Present 1969-1970					Projected 1970-1971					NORMAL CAPACITY	MAXIMUM CAPACITY	PORTAB NEED
	Grades	Negro	White	Total	% Negro	Grades	Negro	White	Total	% Negro			
West Hollywood	1-5	3	607	610	0.5%	1-5	0	755	755	0%	720	1,110	0
Sub-Total		3,331	17,304	20,635	16.1%		3,102	16,390	19,492	15.9%	18,760	23,350	23
Total		15,309	43,114	58,423	26.2%		14,486	40,930	55,416	26.1%	52,120	63,415	72

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 30032

FREDERICK ALLEN and TIMOTHY ALLEN,
minors, etc., et al,

Plaintiffs-Appellants-Cross Appellees,

versus

BOARD OF PUBLIC INSTRUCTION OF
BROWARD COUNTY, FLORIDA, etc., et al,
Defendants-Appellees,

BLANCHE ELY HIGH SCHOOL PARENT
TEACHERS ASSOCIATION and IRENE S. CLARKE,
Defendants-Appellees-Cross Appellants.

Opinion

Appeals from the United States District Court for the Southern District of Florida

(August 18, 1970)

Before GEWIN, GOLDBERG and DYER, *Circuit Judges.*

GOLDBERG, *Circuit Judge*:

We consider here the plan of desegregation ordered for Broward County, Florida, by the district court.[1] The Broward County School System is a county-wide system serving a largely urban and rapidly growing area of the Florida "Gold Coast." During the 1969-70 school year the Board of Public Instruction of Broward County operated 115 schools to educate more than 112,000 students, approximately 77 percent white and 23 percent black. Under the

[1] This appeal was expedited in accordance with the procedures outlined in Singleton v. Jackson Municipal Separate School District, 5 Cir. 1970, 419 F.2d 1211, 1222 (en banc), *rev'd in part on other grounds sub nom.* Carter v. West Feliciana Parish School Board, 1970, 396 U.S. 290, 90 S.Ct. 608, 24 L.Ed.2d 477.

Board's projections for the 1970-71 school year, 116 schools will educate more than 118,000 students, approximately 78 percent white and 22 percent black. A substantial percentage of the students in the Broward County system are transported to and from school by bus.

The present desegregation suit was filed by Negro plaintiffs on January 9, 1970. The first hearing to consider this action was held on January 16, 1970. As a result of facts adduced at that hearing the district court found that the Board was operating a dual school system. The Board was ordered to file by February 16, 1970, "a comprehensive plan to establish a unitary school system" in Broward County. The court suggested that the Board, in formulating its plan, consult with the Florida School Desegregation Consulting Center at the University of Miami.

A plan was duly submitted, objections were filed with the court, and a hearing was held on March 3, 1970. At that hearing the court expressed the view that it needed more information to measure the plan against constitutional standards. The Board was directed to "consult and cooperate with and accept the aid of" the Florida School Desegregation Consulting Center in revising its plan "with special emphasis on eliminating the remaining all-black elementary schools." The Center was requested to make a report with recommendations "designed to assure a desegregation plan which meets the constitutional standard of a unitary system."

Pursuant to the court's directives, the Board filed an amended plan and the Center submitted its recommendations. The principal difference between the two proposals was in their approach to the problem of desegregating all-black and overwhelmingly black elementary schools. The Center suggested use of school pairing as a means of desegregating these elementary schools, but the Board's plan rejected pairing. The plan submitted by the Board merely amended some of the discretionary zone lines which had previously been proposed.

The court held a hearing on April 3, 1970, to consider the Board plan and the Center's proposal. At that hearing the court heard the views of the Board, the Center, the plaintiffs, and various parties who had been allowed to intervene. On April 30, 1970, the court entered its final order. With regard to the hotly disputed issue of student desegregation in the elementary schools, the court's order rejected the Center's approach and accepted the boundaries of school attendance zones as proposed in the Board's amended plan. From that order plaintiffs have perfected this appeal. An appeal has also been taken by intervenors, Blanche Ely High School Parent Teachers Association and Irene S. Clark.

THE DISTRICT COURT'S ORDER

With respect to faculty, staff, transportation, extracurricular activities, and facilities, the desegregation order entered by the district court on April 30, 1970, is unexceptional and is not challenged by any of the parties. Except for the problem noted in the next paragraph of this opinion, the order is in compliance with all of our *Singleton*[2] requirements, including the requirement that faculty and staff members be assigned in such a manner that the ratio of whites to blacks in each school is substantially the same as the ratio of whites to blacks in the entire system.[3] The order further provides for a bi-racial com-

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[2] Singleton v. Jackson Municipal Separate School District, 5 Cir. 1970, 419 F.2d 1211 (en banc), *rev'd in part sub nom.* Carter v. West Feliciana Parish School Board, 1970, 396 U.S. 290, 90 S.Ct. 608, 24 L.Ed.2d 477 (per curiam) (reversal limited to the issue of *timing* of student desegregation).

[3] The court's order also noted that the school board, apparently on its own initiative, had made plans to conduct an extensive orientation program to prepare faculty and staff for the advent of desegregation. We are inclined to agree with the Board that "[a]lthough *Singleton* did not require such an orientation program, obviously one is necessary if the unitary school system plan is going to work." Brief of Appellees at 9.

mittee of twelve members—six blacks and six whites—to be appointed by the court to make recommendations to the Board with respect to such matters as "the operation of [the] majority to minority pupil transfer rule, the transportation system, and selection of school sites." The record indicates that this committee has been appointed, and it is apparently functioning now.

Although the parties have not put it in issue, we note one deficiency in the district court's order. This deficiency has to do with the majority-to-minority transfer provision. The order approves the following transfer rule:

> 1. Any pupil, with parental consent, shall have the right to transfer from a school at which his race is in the majority to the next nearest school at which his race is in the minority and the board shall furnish free transportation provided the distance involved meets state transportation statutes.
>
> 2. Other reassignment requests will be considered providing the request does not involve the transfer of a pupil [from a school] in which his race in the minority to a school in which his race is in the majority.

This provision is not entirely in accord with our recent decisions. See *Hightower* v. *West*, 5 Cir. 1970, ... F. 2d ..., ... [No. 29933, July 14, 1970, slip opinion at 14]; *Carr* v. *Montgomery County Board of Education*, 5 Cir. 1970, ... F. 2d ..., ... [No. 29521, June 29, 1970, slip opinion at 9]; *Davis* v. *Board of School Commissioners of Mobile County*, 5 Cir. 1970, ... F. 2d ..., ... [No. 29332, June 8, 1970, slip opinion at 10]; *Singleton* v. *Jackson Municipal Separate School District*, 5 Cir. 1970, ... F. 2d ..., ... [No. 29226, May 5, 1970, slip opinion at 11]. On remand the district court's order must be modified to make it clear that (1) any pupil shall have the right to transfer from a school at which his race is in the majority to *any* school (not just the next nearest school) at which

his race is in the minority and (2) transferees shall be given priority for space.[4]

STUDENT DESEGREGATION: SECONDARY SCHOOLS

Student assignment to secondary schools—high schools, junior high schools, and middle schools—presents no problem on this appeal. The plaintiffs are not unhappy with the court-approved plan insofar as it relates to pupil assignment to secondary schools, and our examination of this aspect of the plan does not disclose any deficiencies to be remedied.

The intervenors, however, raise an issue with regard to the closing of Blanche Ely High School. Blanche Ely, located in a black neighborhood in Pompano Beach, has a junior-senior high school. During the 1969–70 school year its student enrollment was percent black. For the 1970–71 school year the court approved the Board's proposal to close the school as a high school facility, send its students elsewhere, and use the building to house the Coleman Elementary School. Intervenors object to the closing of Blanche Ely High School, arguing (1) that the community which has been served by the school will suffer if the school ceases to exist and (2) that the district court was erroneous in finding that the Blanche Ely physical plant is not an adequate secondary school facility.

We are not persuaded that we should order the district court to require the reopening of Blanche Ely as a high school. There is nothing in the record to indicate that the Board's decision to close Blanche Ely was based on any-

[4] This priority provision, of course, applies only to transfer requests made prior to the beginning of each school term. When a transfer request is received by the school board during a school term, it may be denied at that time if there is no space available in the school to which the student wishes to transfer. In such a situation the transfer request will be deferred until the beginning of the next school term, at which time the transfer applicant will be given an absolute priority for space.

thing other than sound educational criteria. Moreover, the record amply supports the district court's finding that the Blanche Ely facility is not an adequate physical facility for conducting a high school program. In the light of these factors we find no merit in the intervenors' objection to the closing of the school.

Student Desegregation: Elementary Schools

The real bone of contention in this case is student assignment at the elementary school level. As we have noted, the Florida School Desegregation Consulting Center, whose recommendations were generally endorsed by the plaintiffs, recommended the use of the pairing/clustering technique to desegregate all-black and virtually all-black schools, but the school board strongly opposed the use of this technique at the elementary level. The district court agreed with the Board's position *vis-a-vis* pairing, requiring only that the Board redraw some of its discretionary zone lines. The results achieved under the amended zoning plan approved by the district court are decidely unimpressive. Of the 83 elementary schools projected for the 1970–71 school year, 13 are to have an enrollment that is 90 percent or more black. The projected student enrollment for these schools is as follows:

School and Location	*Black*	*White*	*Total*	*Percentage Black*
Carver Ranches (in South Area)	663	37	700	95%
C. A. Moore (in South Area)	598	0	598	100%
Broward Estates (in Central Area)	779	78	857	91%
Dillard (in Central Area)	982	3	985	99%
Larkdale (in Central Area)	1054	0	1054	100%
Lincoln Park (in Central Area)	892	0	892	100%
Rock Island (in Central Area)	642	50	692	93%
Sabal Palm (in Central Area)	632	25	657	96%
Walker (in Central Area)	733	0	733	100%
Charles Drew (in North Area)	1014	17	1031	98%
Coleman (in North Area)	601	25	626	96%
Markham (in North Area)	536	60	596	90%
Sanders Park (in North Area)	666	48	714	93%

The black students to be assigned to these 13 schools constitute 68 percent of the total number of black elementary students in Broward County. The plaintiffs contend that the existence of these all-black and virtually all-black elementary schools in Broward County is unacceptable. We agree.

The reason for the existence of so many all-black and virtually all-black elementary schools under the court-approved plan is clear from an examination of the record: the trial judge achieved as much desegregation of formerly black elementary schools as he thought practicable by the redrawing of discretionary zone lines, but he refused to pair or cluster any elementary schools.[5] In the factual situation here presented we think the trial court's rejection of the pairing technique must be reversed.

In the conversion from dual school systems based on race to unitary school systems, the continued existence of all-black or virtually all-black schools is unacceptable where reasonable alternatives exist. And it is clear that one acceptable way to achieve reasonable alternatives is by pairing schools. The tenor of our decisions is unmistakable: where all-black or virtually all-black schools remain under a zoning plan, but it is practicable to desegregate some or all of the black schools by using the tool of pairing, the tool must be used. Thus we have required the pairing or clustering of schools in Dade County, Florida,[6] in Pinellas County, Florida,[7] in Hillsborough County,

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[5] In his final order entered on April 30, 1970, the district judge correctly defined "pairing" as "combining the attendance areas of [two] schools and sending all students in certain grades to one of the schools and all students in the other grades to the other school." The terms "grouping" and "clustering" connote the same technique when applied to three or more schools.

[6] Pate v. Dade County School Board, 5 Cir. 1970, ... F.2d ... [Nos. 29039 and 29179, August ..., 1970].

[7] Bradley v. Board of Public Instruction of Pinellas County, 5 Cir. 1970, ... F.2d ... [No. 28639, July 28, 1970].

Florida,[8] in Alachua County, Florida,[9] in Clarksdale, Mississippi,[10] and in Jackson, Mississippi,[11] to mention only a few instances. It is now clear beyond peradventure that the tool of school pairing—a most viable tool in the school desegregation process—must be embraced where it is practicable and desegregation cannot be achieved by other means.

The Supreme Court has told us that "[t]here is no universal answer to complex problems of desegregation; there is obviously no one plan that will do the job in every case. The matter must be assessed in light of the circumstances present and the options available in each instance." *Green* v. *County School Board of New Kent County*, 1968, 391 U.S. 430, 439, 88 S. Ct. 1689, 20 L. Ed 2d 716. There are indeed many roads to Rome, and the pairing road must not be avoided like the plague simply because it presents some problems to the school board and the community. We are not insensitive to the abrasions and dislocations that can sometimes be caused by the pairing technique—and in every case the courts must strive to keep such problems to a minimum—but the pairing technique cannot be totally eschewed because it is not perfect. The Supreme Court has commanded courts and school boards to eliminate school segregation "root and branch," *Green, supra,* 391 U.S. at 438, and to do it *now.* See *Green, supra; Alexander* v. *Holmes County Board of Education,* 1969, 396 U.S. 19, 90 S. Ct. 29, 24 L. Ed. 2d 19; *Carter* v. *West Feliciana Parish School Board,* 1970, 396

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[8] Mannings v. Board of Public Instruction of Hillsborough County, 5 Cir. 1970, ... F.2d ... [No. 28643, May 11, 1970].

[9] Wright v. Board of Public Instruction of Alachua County, 5 Cir. 1970, ... F.2d ... [No. 29999, August 4, 1970].

[10] Henry v. Clarksdale Municipal Separate School District, 5 Cir. 1970, ... F.2d ... [No. 29165, August ..., 1970].

[11] Singleton v. Jackson Municipal Separate School District, 5 Cir. 1970, ... F.2d ... [No. 29226, August ..., 1970].

U.S. 290, 90 S. Ct. 608, 24 L. Ed. 2d 477. We must be responsive to this constitutional mandate.

Our examination of the record before us indicates that the pairing/clustering technique can be utilized to desegregate *every one* of the 13 all-black or virtually all-black elementary schools envisioned in the plan approved by the district court. This desegregation can be accomplished "without creating impractical attendance zones or inordinate transportation problems." *Bradley* v. *Board of Public Instruction of Pinellas County*, 5 Cir. 1970, ... F. 2d ..., ... [No. 28639, July 28, 1970, slip opinion at 9]. Accordingly, we hereby order the following modifications in the district court's desegregation order for the 1970–71 school year.

South Area

The area designated by the school board as the South Area includes two all-black or virtually all-black schools, Carver Ranches and C.A. Moore. These schools present an obvious opportunity for application of the pairing/clustering technique, for both the Carver Ranches zone and the Moore zone are surrounded by predominantly white school zones. The district court shall order the following groupings:

(1) Carver Ranches, Orange Brook, Watkins, and Lake Forest

(2) Moore, Colbert, Hollywood Central, and Hallendale

The projected student enrollments in the attendance zones created by these groupings are set out in the Appendix to this opinion.

Central Area

The Central Area contains a core area of black population concentration in which seven elementary schools are more than 90 percent black, including three schools

that are 100.0 percent black and one that is 99.6 percent black. The seven schools are Larkdale, Broward Estates, Sabal Palm, Lincoln Park, Walker, Dillard, and Rock Island. Our study of this area indicates that it is practicable to effectively desegregate every one of these seven schools by use of the pairing/clustering technique. The district court shall order the following groupings:

(1) Larkdale, Lauderhill, and Castle Hill

(2) Broward Estates, Plantation, and Pine Ridge

(3) Sabal Palm, Westwood Heights, and Sunset

(4) Lincoln Park, North Fork, Hortt, and Riverland

(5) Walker, North Side, and East Side

(6) Dillard, Lauderdale Manors, and Wilton Manors

(7) Rock Island, Oriole, and Lloyd Estates

The projected student enrollments in the attendance zones created by these groupings are set out in the Appendix to this opinion.

North Area

The North Area contains a block of four schools—Charles Drew, Markham, Coleman, and Sanders Park—which are more than 90 percent black. Several nearby schools, however, are predominantly white or all-white. Thus all four schools can be desegregated by use of the pairing/clustering technique. In fact, because of the arrangement of the zones in this area, several reasonable alternatives exist. We have listed these alternative arrangements below as Plans "A" through "F." The decision as to which plan to implement is left to the district court. Each plan includes a slightly different combination of pairing and grouping, although the result in each case is a total of four attendance zones. We express no preference for any particular plan, for each plan presents a satisfactory

method of desegregating the four overwhelmingly black schools. The district court shall order the implementation of one of the following pairing/clustering plans:

Plan A

(1) Charles Drew and Coconut Creek
(2) Markham, Tedder, and Palmview
(3) Coleman and Cypress
(4) Sanders Park, Pompano Beach, and Cresthaven

Plan B

(1) Charles Drew and Coconut Creek
(2) Markham and Cypress
(3) Coleman, Pompano Beach, and Cresthaven
(4) Sanders Park, Palmview, and Tedder

Plan C

(1) Charles Drew, Coconut Creek, and Cypress
(2) Markham and Tedder
(3) Coleman and Pompano Beach
(4) Sanders Park, Palmview, and Cresthaven

Plan D

(1) Charles Drew, Coconut Creek, and Cypress
(2) Markham, Palmview, and Tedder
(3) Coleman and Pompano Beach
(4) Sanders Park and Cresthaven

Plan E

(1) Charles Drew, Coconut Creek, and Tedder
(2) Markham and Cypress
(3) Coleman and Pompano Beach
(4) Sanders Park, Palmview, and Cresthaven

Plan F

(1) Charles Drew, Coconut Creek, and Tedder
(2) Markham, Palmview, and Cresthaven
(3) Coleman and Cypress
(4) Sander Park and Pompano Beach

The projected student enrollments in the attendance zones created by each of these alternative arrangements are set out in the Appendix to this opinion.

IMPLEMENTATION

The district court is directed to implement the above modifications in the Broward County School System for the 1970–71 school year.

In ordering the pairings and groupings described above we have not suggested which specific grades should be assigned to which specific schools. Those decisions are left to the district court. With his ready access to the expertise of the school board, the district court is better situated than we are to make those decisions. However, in deciding which grades will attend which schools, the district court is ordered to comply with the following requirements: (1) In every attendance zone created by pairing and clustering the court must make every reasonable effort to avoid "splitting" a grade, i.e., assigning any particular grade to more than one school. (2) If in some instances it does become necessary to split a grade, the court will assign the students in that grade in such a manner that the degree of desegregation ordered by this court for that attendance zone will not be diminished.

With regard to all other aspects of the desegregation plan as modified by this opinion, the district court shall be free to exercise his discretion to order alterations and adjustments submitted by the school board or by any other party. The district court's discretion shall be limited, how-

ever, to the extent that no alteration or adjustment may be ordered if its implementation would diminish the degree of desegregation projected by this opinion. See *Pate* v. *Dade County School Board*, 5 Cir. 1970, . . F. 2d . . , . . [Nos. 29039 and 29179, August . . , 1970, slip opinion at . . , typed opinion at 15–16].

It is axiomatic, of course, that the school board and the district court are under a continuing duty to appraise the school system in the light of actual conditions and experience and, within the limits we have just indicated, to make whatever changes are necessary, now and in the future, to asure the continued maintenance of a unitary system.

The mandate in this cause shall issue forthwith. No stay will be granted pending petition for rehearing or application for writ of certiorari.

AFFIRMED in part; REVERSED in part; REMANDED with direction.

APPENDIX

Student Desegregation Achieved by Pairing and Clustering Schools

SOUTH AREA

School Zone	*Black*	*White*	*Total*	*Percentage Black*
Carver Ranches–Orange Brook–Watkins–Lake Forest	1149	1734	2883	39.85
Moore–Colpert–Hollywood Central–Hallandale	866	1533	2399	36.09

CENTRAL AREA

School Zone	*Black*	*White*	*Total*	*Percentage Black*
Larkdale–Lauderhill–Castle Hill	1264	1394	2658	47.55
Broward Estates–Plantation–Pine Ridge	865	1235	2100	41.19
Sabal Palm–Westwood Heights–Sunset	816	1203	2019	40.41
Lincoln Park–North Fork–Hortt–Riverland	1179	1083	2262	52.12
Walker–North Side–East Side	933	1003	1936	48.19
Dillard–Lauderdale Manors–Wilton Manors	982	1220	2202	44.59
Rock Island–Oriole–Lloyd Estates	697	1181	1878	37.11

NORTH AREA—*Plan A*

School Zone	*Black*	*White*	*Total*	*Percentage Black*
Charles Drew–Coconut Creek	1024	706	1730	59.19
Markham–Tedder–Palmview	737	1171	1908	38.62
Coleman–Cypress	601	750	1351	44.48
Sanders Park–Pompano Beach–Cresthaven	686	1416	2102	32.63

NORTH AREA—*Plan B*

School Zone	*Black*	*White*	*Total*	*Percentage Black*
Charles Drew–Coconut Creek	1024	706	1730	59.19
Markham–Cypress	536	785	1321	40.57
Coleman–Pompano Beach–Cresthaven	621	1393	2014	30.33
Sanders Park–Palmview–Tedder	867	1159	2026	42.79

NORTH AREA—*Plan C*

School Zone	*Black*	*White*	*Total*	*Percentage Black*
Charles Drew–Coconut Creek–Cypress	1024	1431	2455	41.71
Markham–Tedder	536	688	1224	43.79
Coleman–Pompano Beach	621	688	1309	47.44
Sanders Park–Palmview–Cresthaven	867	1236	2103	41.22

NORTH AREA—*Plan D*

School Zone	*Black*	*White*	*Total*	*Percentage Black*
Charles Drew–Coconut Creek–Cypress	1024	1431	2455	47.71
Markham–Palmview–Tedder	737	1171	1908	38.62
Coleman–Pompano Beach	621	688	1309	47.44
Sanders Park–Cresthaven	666	753	1419	46.93

NORTH AREA—*Plan E*

School Zone	*Black*	*White*	*Total*	*Percentage Black*
Charles Drew–Coconut Creek–Tedder	1024	1334	2358	43.42
Markham–Cypress	536	785	1321	40.57
Coleman–Pompano Beach	621	688	1309	47.44
Sanders Park–Palmview–Cresthaven	867	1236	2103	41.22

NORTH AREA—*Plan F*

School Zone	*Black*	*White*	*Total*	*Percentage Black*
Charles Drew–Coconut Creek–Tedder	1024	1334	2358	43.42
Markham–Palmview–Cresthaven	737	1248	1985	37.12
Coleman–Cypress	601	750	1351	44.48
Sanders–Pompano Beach	686	711	1397	49.10

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

No. 70-31-Civ-TC

FREDERICK ALLEN and TIMOTHY ALLEN, minors, by W. GEORGE ALLEN, father and next friend; and VON D. MIZELL, President of the National Association for the Advancement of Colored People, and all others similarly situated,

Plaintiffs,

v.

BOARD OF PUBLIC INSTRUCTION OF BROWARD COUNTY, FLORIDA, a public body organized and existing under the laws of the State of Florida; and WILLIAM C. DRAINER, Superintendent of Public Schools of Broward County, Florida,

Defendants.

Order

Hearing was held before the court on August 24, 1970, to consider recommendations of the parties for implementation of the August 18, 1970 order of the Fifth Circuit Court of Appeals, which reversed certain portions of this Court's school desegregation plan of April 30, 1970.

Benjamin C. Willis, school superintendent, presented a written report (Defendants' Exhibit No. 4), suggesting (1) alternate plans for assigning specific grades to the schools which had been paired or grouped by the Fifth Circuit order; (2) that North Area Plan "D" was the most appropriate pairing/grouping plan for *that* area, and (3) a new pupil transfer plan for the school system. The report was supplemented by an oral presentation by the school superintendent, by argument of counsel and by limited testimony of various members of the school staff.

The school superintendent and staff stated that it would not be possible to implement the new pairing/grouping

plan by August 31, 1970, and that implementation be delayed until February 1, 1971.

Counsel for plaintiffs presented oral argument in opposition to certain of the alternate suggestions of the school superintendent, and urged immediate adoption of the amendments of the school plan of the Fifth Circuit, so that the new plan might be implemented at the scheduled opening of the public schools of the county on August 31, 1970.

The court concludes that it is physically impossible to implement the Fifth Circuit school plan of August 18, 1970, by the scheduled opening of school on August 31, 1970, for the reasons stated in the School Implementation Report of August 24, 1970 (Defendants' Exhibit No. 4), and that the welfare of all the children to be reassigned to the grouped/paired schools, would be better served by attending school as assigned under this court's plan of April 30, 1970, until the short day when they can be reassigned under the Fifth Circuit Court's modifications. It is significant that the Fifth Circuit Court order specified that its provisions should be implemented for the "1970–1971 school year" and does not specify the opening day of school on August 31, 1970.

Counsel for Intervenors Blanche Ely High School Parent Teachers Association, and Irene S. Clarke registered his continued objection to the scheduled closing of Blanche Ely High, and suggested that the school board operate the schools under the 1969–1970 plan during the interim period while activating the new Fifth Circuit plan.

This court had found by its order of January 22, 1970, that the school system as then being operated by the board constituted a dual system of public schools, segregated by race. Counsel for the school board pointed out that the April 30, 1970, plan adopted by this court had been totally implemented for opening of the schools in one week for the 1970–1971 school year, and that any substantial

changes, whether implementation of the Fifth Circuit plan of August 18, 1970, or returning to the 1969–1970 plan, would require new planning and implementation as set forth in Defendant's Exhibit No. 4, and could not be done by the scheduled opening of school August 31, 1970.

The school board's professional staff expressed a preference for the proposed "B" alternates of the boards Exhibits No. 4, for assigning specific grades to the schools grouped or paired by the Fifth Circuit, as being sounder educationally in offering a more continuous instructional program and requiring less transportation. The general plan of the "B" alternates, continues the first three or four elementary grades in each school within a group, except one school in the group, and assigns the last two or three elementary grades to that school. Since this plan calls for a general "splitting" of grades for reasons not connected with the student capacities of the schools, or other valid reasons, it appears to be contrary to the Fifth Circuit Court order of August 18, 1970, and cannot be approved by this Court.

The alternate "A" plans provide generally for conventional assignment of whole grade to the same school within the pair or group in accordance with the Fifth Circuit directions, but calls for "splitting" grades in three of the thirteen groups/pairs.

The Fifth Circuit Court's order provides ". . . in deciding which grades will attend which schools, the district court is ordered to comply with the following requirements: (1) In every attendance zone created by pairing and clustering, the court must make every reasonable effort to avoid "splitting" a grade, i.e., assigning any particular grade to more than one school; (2) If in some instances it does become necessary to split a grade, the court will assign the students in that grade in such a manner that the degree of desegregation ordered by this court for that attendance zone will not be diminished."

Directive (1) above concerns groups/pairs in which no grades are divided or "split" between schools. Variations in precentage of Black Students in the individual school from the percentage of Black Students in its total group/pair are thus approved, since the percentage of Black Students varies from grade to grade.

Directive (2) above concerns only those grades which are divided or "split" between schools and appears to be designed to prevent the use of "splitting" of grades as a means to diminish the percentage of desegregation. The court interprets this provision to require that each of the separate portions of "split" grades be composed of substantially the same percentage of Black Students.

A second hearing in this cause was called by the court on a few hours notice on August 26, 1970, for the purpose of the courts' obtaining from the school board staff the justification for the "splitting" of grades in the three groups (Groups I and II, South Area and Group III, Central Area) in which this technique was recommended in the schools implementation report of August 24, 1970. The staff indicated the "split" grades were necessary in order to make a better balanced use of the student capacities of the schools. A secondary benefit also resulted in retaining some of the students closer to their homes, thus reducing transportation required. The court so finds; however, it appears that the percentages of Black Students assigned to the separate portions of the "split" grades varies too widely and therefore do not comply with the requirements of Directive #2 set forth above.

Accordingly, it is ORDERED and ADJUDGED that:

1. Plan "D" of the Fifth Circuit Court's alternate plans for the grouping/pairing of elementary schools in the North Area is hereby adopted by this court as the plan for that area.

2. The Alternate "A" plans of the school superintendent's implementation report of August 24, 1970, for as-

signment of specific grades to the various schools within the groups or pairs, are hereby approved, provided, however, the following modifications to the Alternate "A" plans shall be made:

a. Group I, South Area (Carver Ranches, Lake Forest, Orange Brook, Watkins); Group II, South Area (Moore, Colbert, Hollywood Central, Hallandale); Group III, Central Area (Sabal Palm, Westwood Heights, Sunset): The proposed assignment of students in all "split" grades shall be changed so that each separate portion of the "split" grades is composed of substantially the same percentage of Black Students.

b. Group I, Central Area (Larkdale, Lauderhill, Castle Hill): The 81 Sixth Grade Black Students, being the only Sixth graders in the group, which are assigned to Larkdale, shall be transferred to the appropriate middle school or Junior High School.

c. Group V, Central Area (Walker, North Side, East Side): The 101 Sixth Grade Black Students, being the only Sixth graders in the group, which are assigned to Walker, shall be transferred to the appropriate middle school or junior high school.

d. Group VI, Central Area (Dillard, Lauderdale Manors, Wilton Manors): The 100 Sixth Grade Black Students, being the only Sixth graders in the group, which are assigned to Dillard, shall be transferred to the appropriate middle school, or Junior High School.

e. The school board shall prepare and transmit to the court by August 31, 1970, new charts reflecting the changes required to be made in paragraphs 2a, b, c, and d hereof.

3. Pupil Reassignments shall be governed by the following:

a. Any pupil shall have the right to transfer from a school at which his race is in the majority to *any* school (not just the next nearest school) at which his race is in the minority, and the board shall furnish free transportation to any such pupil, providing the distance involved meets transportation statutes.

b. Tranferees shall be given priority for space. This priority provision, applies only to transfer requests made prior to the beginning of each school term. When a transfer request is received by the school board during a school term, it may be denied at that time if there is no space available in the school to which the student wishes to transfer. In such a situation the transfer request will be deferred until the beginning of the next school term, at which time the transfer applicant will be given an absolute priority for space.

4. The Broward County School Board and School Superintendent shall immediately take all action necessary or desirable to implement at the earliest possible time the August 18, 1970 order of the Fifth Circuit Court of Appeals and this order. Until the short day when such implementation may be accomplished, students shall report to schools as presently assigned. The board must recognize, as the court does, that the best interests of the students will be served if reassignment of students is accomplished in the minimal time.

5. A hearing will be held before the court on Wednesday, September 2, 1970, at 3:30 p.m., and the Broward County School Board and School Superintendent shall then submit to the court a list of necessary matters yet remaining to be done to implement the August 18, 1970, order of the Fifth Circuit Court of Appeals and this or-

der, and the time needed to accomplish them. Plaintiffs may also submit evidence and argument with respect thereto and the court will fix the date for implementation thereof.

6. The speaking motion of W. George Allen, attorney for the plaintiffs, for leave to file a petition to compel defendant school board to pay him attorney's fees and costs for his representation of plaintiffs in this cause is granted and he shall have twenty days to file such motion with accompanying memorandum of law and affidavits. Counsel for defendant school board shall have twenty days thereafter in which to file opposing memorandum of law and affidavits. The court will set oral argument thereon if either side asks for a hearing.

7. Argument will be heard by the court on the merits of intervenor T. Minton Baughman's petition at 3:30 p.m., Wednesday, September 2, 1970.

DONE and ORDERED at Miami, Florida, this 28th day of August, 1970.

/s/ Ted Cabot
United States District Judge

IMPLEMENTATION
OF
THE FIFTH CIRCUIT COURT OF APPEALS ORDER

NO. 30032

Benjamin C. Willis
Superintendent of Schools

August 24, 1970

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
1320 Southwest Fourth Street
Fort Lauderdale, Florida 33312

For dedicated service to education in Broward County and for performance above and beyond the call of define duties, I gratefully acknowledge the assistance of the following people in the formulation and compilation of this document.

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Associate Superintendent for Operational Services

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Associate Superintendent for Curriculum and Teaching

Hal P. Jackson
Associate Superintendent for Administration and Personnel

William T. McFatter
Associate Superintendent for Finance and Accounting

James J. Gardener
Director of Special Projects

Albert H. Beckett
Assistant Associate Superintendent for Operational Services

Warren C. Cox
Curriculum Assistant, Central Area

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Coordinator, Pupil Assignment

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Coordinator, Safety Department

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Supervisor, Language Arts

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Supervisor, Inservice Education

For secretarial and production assistance, I am grateful to the following people:

Rebecca, Kunze, Alberta A. Hoeber, Jane Back, Carol A. Drouet

The imposition of a social decree can be as delicate as the dew, as omnipotent as the sun, and as accepted as both—it is the timing that makes it bitter or sweet.

INTRODUCTION

On April 30, 1970, the School Board of Broward County, Florida accepted from Judge Cabot the final order of District Court for achieving a "unitary school system" in Broward County. The Board appreciates the fact that Judge Cabot carefully considered its own plan for school integration which he measured against constitutional standards.

In his comprehensive review of the matter, Judge Cabot supported the Board's contention that the pairing of schools is educationally unsound by specifically rejecting the recommendations for pairing of schools submitted by the Desegregation Consulting Center with whom staff members of the Broward School System had worked on orders of the District Court itself.

In this current review of the issue, the School Board of Broward County and its staff wishes to pay tribute to

the careful procedures and judicious understanding of Judge Cabot in formulating a decision which, while it was a difficult one to execute in a period of three and one-half months, has been accomplished without a serious disruption of the improving race relations in our community and without threatening a sound instructional program for the 120,000 elementary and secondary school students in Broward County.

The School Board of Broward County is dismayed at the untimely and seemingly arbitrary ruling of the Fifth Circuit Court of Appeals in New Orleans which so abruptly dismisses the "decidedly impressive" efforts of its staff members to effect, by the opening of school on August 31, 1970, the order of Judge Cabot, which was accepted, developed, and implemented in good faith. It is to Judge Cabot's credit and it is a measure of his astute grasp of the issues involved that he provided an adequate, if not ample, time period within which multitudinous problems could be defined and solutions found.

HISTORICAL BACKGROUND AND ACCOMPLISHMENTS

Even prior to the decision handed down by Judge Cabot, the Broward School Board, its Superintendent and Staff had worked in good faith to meet the requirements for a unitary school system as it was then understood. The plans called for an educationally sound desegregation schedule that began in the early 1960's, and was given impetus by the passage of a 108.6 million dollar bond issue in 1968. This bond issue provided facilities for an orderly change from a partially segregated system to a unitary system. All grades 6-12 were to be desegregated by a plan commensurate with sound educational research. Elementary schools were to remain as neighborhood schools.

As judicial interpretations of the 1954 decision changed, the school system worked with various agencies as necessary, always in good faith, to make the changes necessary

to implement the ever new and changing guidelines that developed, seemingly on the whim of the hour. At various times they worked with representatives of the Department of Health, Education, and Welfare both at Washington and Atlanta as well as the Desegregation Consulting Center at the University of Miami.

The plans called for a desegregation schedule beginning in 1968 for completion by 1973. All secondary schools were to have been desegregated, with elementary schools remaining as neighborhood schools.

The school system has always believed in the educational soundness of the neighborhood school concept especially at the elementary level, although agencies and courts seem continually to attack the plans predicated on this concept. This order effectively destroys the neighborhood school for certain groups of students.

On March 16, 1970, Judge Cabot ordered the School Board of Broward County to establish a unitary school system by April 9, 1970. Since that date, school boundaries have been altered to comply with the order, parents have been notified and 24,000 students have been reassigned.

A new organizational pattern was implemented to change elementary schools from grades one through six to Kindergarten through five; junior high schools from grades seven through nine to middle schools with grades six through eight; and senior high schools from grades ten through twelve to nine through twelve. Additionally, two new high schools were organized for grades nine through twelve.

A plan for teacher reassignment was devised by a group selected by the Superintendent and under this plan 1127 teachers have been reassigned to new school centers. Principals cooperated with the Personnel Division in the selection of those persons to be reassigned so they would best fit the educational needs of the schools. For example, combinations were established so that teachers would not

leave a flexible school but were reassigned to another flexible school. Teachers in self-contained type school centers were reassigned, insofar as possible, to other self-contained type centers.

Teachers with experience in individualized instructional programs were assigned to schools with similar programs wherever possible. As a part of this plan, an inservice training program was prepared and has been carried out. The program was begun with a county-wide television program conducted by the Superintendent and his staff. It was telecast into all schools. All members of the profession were given the opportunity to phone in their questions so that each person would understand the impact of the integration order on his particular situation.

Additionally, inservice programs in the form of workshops were held for teachers who were transferred from familiar programs into others with which they had no familiarity, e.g., a teacher with self-contained classroom experience transferred to an individualized program was given the opportunity to learn some of the techniques to be expected of him in 1970-71.

Human relations specialists have addressed education groups to prepare personnel for some of the problems of integration which they might encounter. There have been a total of 515 participants in a series of inservice programs.

Other human relations workshops were conducted for principals, assistant administrators, and guidance personnel to prepare them for the special problems they will have to deal with in the desegregation process. For these workshops consultants were obtained from other school systems in Florida which have experienced this change.

Special workshops were held during the week of August 10 to August 17 for teachers newly assigned to flexible school programs as a result of plans for desegregation. The number of participants was 136.

Also there has been a program of school intervisitation based on system of faculty exchange which has allowed teachers with little experience in integrated school settings to see first hand the operation of fully integrated schools.

In the current plan the percentage of teachers to be relocated reflects directly the number of students of each race at the elementary, junior, and senior high school level. This is in compliance with Judge Cabot's order for a unitary school system.

Special efforts to obtain the textbooks appropriate for the changed student body in newly integrated schools were made by the Textbook Department and the supervisory staff working with school building principals.

The Supervisor of Instructional Materials has conducted an analysis of school libraries to make sure that adequate and appropriate materials were available for students in newly integrated schools.

Budgets for the current year, which are prepared for schools on a per pupil cost basis, have already been computed on the basis of enrollments expected as a result of implementing Judge Cabot's order.

Principals have received these budgets, assigned the funds to supplies and materials categories appropriate to their instructional program for the new year, and have returned those budgets to the county for processing. A tremendous amount of supplies and materials have already been bought to support the instructional program anticipated in each school for the 1970-71 school year.

Bus routes in Broward County which cover a total of 16,000 miles per day have had to be substantially changed to accommodate new school boundaries resulting from Judge Cabot's order. Additional miles of travel required amount to an increase of 5500 miles per day, one million miles per year, at a cost of approximately $370,000. An additional 4,000 students will have to be transported;

special authorization for transporting 159 students has been given because of hazardous conditions on new access routes.

The driver's day has been increased from 7½ hours to 8½ hours per day which places most of the drivers into the overtime pay category. Ten drivers have resigned because of this increase in length of working day and because of problems inherent in the integration process—real and imagined. At this point, the System needs 40 additional drivers. These drivers have to go through a minimum training program of 40 hours which requires a minimum of two weeks until that driver is hired and assigned to a permanent route.

Buildings and programs originally designed to accommodate one age group of students have been to a great extent redesigned to accommodate new groupings of students. Furniture, equipment, library books and textbooks, materials and supplies have been shifted from school to school in order to accommodate these new grade groupings and ages of students.

Broward County has a totally accredited school system in grades 1-12. This accreditation is based on adequate program and building design, adequate equipment and materials, and the training of teachers. Implementation of Judge Cabot's order required that standards be kept in mind at all times in order not to jeopardize the accreditation of the Broward County School System. Large student enrollments in the senior high schools and the result of double sessioning of these schools has required the addition of 30 school administrators to absorb the administrative load with this size program. This cost $360,000.

The tremendous number of students shifted and the tracking problem involved in order to insure their records followed them, and followed them in an up-to-date condition, required that administrators, guidance personnel, and secretaries be employed for an additional 19 days; 53

people worked during the summer at an estimated cost of $37,000.

A primary concern of school and community leaders alike, as they planned to implement District Court orders, was the health and safety of the thousands of children who would be required to travel greater distances or over new routes to get to school. Many special provisions have been made to guarantee their welfare:

new streets and sidewalks have been built
many walk ways have been extended
new signal lights have been installed
adults have been hired as crossing guards
needed school zones and markings have been made
traffic control devices have been obtained
security officers have been assigned to some schools

Civic leaders and school personnel have worked diligently for the past four months to build healthy attitudes within the school communities to be most severely affected by the new school attendance regulations. These efforts have been aimed at several specific goals:

allaying the fears of parents whose children will have to move from a familiar school to a new one
studying access routes to all schools to assure safety for children
building positive relationships between parents and new school faculty members
familiarizing students with the new schools they would be attending

Because Judge Cabot had wisely permitted a period of adjustment for implementing his decision, school and community leaders have been able successfully to overcome the initial, strong emotional reaction which followed the order in some communities. The importance of the factor of time cannot be over emphasized, for although buildings can be altered and furniture moved on schedule, the atti-

tudes and feelings of people, especially on a matter so vital as the education of their children, need time to adjust.

CONCERNS OF IMPLEMENTATION

The Educational Problems

It is especially alarming to the School Board of Broward County, Florida, to contemplate that a judicial decision made in New Orleans might have the effect of subverting recent massive efforts of the whole school system to reorganize its instructional program in a way to provide a continuous and effective learning experience for all students. Tremendous amounts of money, time, and effort have been invested in teacher training, materials development and experimentation with innovative uses of space and time within the school day.

These massive efforts have resulted in a break-through in education organization which promises to effect great strides in educational achievement countywide. Careful planning has guaranteed that no disruption of this progress will occur in the implementation of Judge Cabot's decision; however, if school pairing is to be forced on our school communities to meet the demands of one definition of a unitary school system time and effort have been wasted and the promises to our children will remain unfulfilled.

The essential condition of school pairing by grade levels will work in direct opposition to the reorganization of our school program which is already under way. All of these plans have been formulated seeking only to provide the best possible and most appropriate education for each child considering him only as an individual and not as a racial statistic. An essential part of a continuous individualized program is the gradual reduction of grade level barriers which can hinder student progress.

A court decision which requires segregation of students into fixed grade levels without concern for their individual

needs is the result of an impaired vision which cannot discriminate the needs of an individual as an individual.

Clustering or pairing under all the court-ordered plans presented, causes a conflict in the educational continuum for the student, e.g., adjusting to a traditional program in one school, the student is then required to adjust to a flexible type program the next year.

The possible loss of the kindergartens in the affected schools because of grade assignments would be another educational loss.

Facility Problems

Relocating portable building to effect the changes.

Relocate the furniture to accommodate the size of the students.

Renovation of facility to accommodate the new age group housed in the facility, i.e., chalk boards, washrooms, and drinking fountains.

Relocate the instructional materials to correspond to the program.

People Problems

Reorientation program for the community, parents, teachers to gain reacceptance and renewed cooperation in implementing the plan.

Family adjustment to children in as many as three elementary schools with a variation in opening and closing times for each. The family readjusts to the loss of the services of the older children in supervising the younger ones in going to and from school, only to find that they must now belong to three P.T.A.'s.

Program variation between paired schools minimizes the effectiveness of family involvement in assisting each other with school work.

Many teachers will require additional inservice training in order to utilize effectively the new instructional environment into what they have been reassigned. This disruptive effect on the teachers will carry over to their interaction with students.

Already successful integrated situations are destroyed, and may never be rebuilt, and the new ones required take at least as long to build as the old ones did.

Safety Problems

The clustering has not considered the time, effort, and money expended by the various communities and agencies in providing sidewalks, traffic control, crossing guards, and the marking of safety lanes required for the safe movement of students to their presently assigned schools. In addition, nine student crossings will have to be constructed over Interstate I-95, and two crossings over the Sunshine State Parkway. Construction work on I-95 presents additional problems.

Transportation Problems

Lack of trained drivers and substitute drivers.

Bus routing is circuitous, causing riding times to be unnecessarily long for the younger students.

New transportation equipment cannot be obtained, thus adjustments must be made in timing routes and school opening and closing.

DISCRIMINATORY ASPECTS AND CONCLUSIONS

Discrimination

A careful study of the Court's plans reveals it to be discriminatory in several ways. In the first place, the schools being directed to pair are located within the central and more densely populated areas of the county. Residential areas near the ocean and in the growing western section of the county where a predominance of upper-middle class

white families live remain relatively unaffected. It would be difficult not to interpret this most recent court order as discriminatory in favor of these more affluent areas of the county.

In addition, any court order directing a specific reorganization of schools is discriminatory against a local community which has a unique history and characteristics of which a remote panel of judges can be only statistically aware. It is presumptuous to think that the judiciary can protect the rights of all communities before the law if it presumes to prescribe particular procedures for desegregation in the wide diversity of communities that constitute America. When judges assume the prerogatives of locally appointed school administrators, they misconstrue their proper role as impartial interpreters of the law.

In the present instance, the decision of the judges of the Fifth District Court of Appeals not only confuses the role of the judiciary and is, in effect, discriminatory against a segment of the community of Broward County—but even more alarmingly it destroys the concept of the elementary school which is not a local institution, but a national one. Should the pairing problems which have been ordered in Broward County be equally required throughout the United States, it would have the effect of subjecting the public school system to the judiciary and thus destroying it as a free American institution.

Review

The administrative and educational problems have been enumerated in detail, but demand repetition here to provide concise reviewing of the problems. Referring to any one of the clusters, they contain people, young people, one-sixth of whom are going to school for the first time this fall. They contain the teaching staffs which have been assigned for almost four months.

It is unthinkable; it is amazing, that anyone could interpret this as a situation that could be completely redi-

rected as suddenly as the court demands. The more information one gets from those who are familiar with the schools, streets, highways, and the people the more the impracticability of a head-long rush into implementation becomes apparent. The implementation of decision on student and teacher reassignment is overwhelming. The preparation of the facility for different students and the accumulating of instructional materials for the grades assigned presents and arduous logistics problem. All of these compounded with problems of transportation, safety, and community relation makes unreasonable the implementation of the order in the manner prescribed.

The additional financial burden of accomplishing these changes would put a strain on the already strained financial condition of the system. Implementation as required would demand the expenditures of resources which could otherwise be directed towards the implementation of a desegregation which the community, parents, students, and educators had planned in good faith, worked for in good faith, and were going to implement in good faith.

The conclusion can be only that cluster/pairing using only statistics is educationally, logistically, and economically unsound.

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
1320 S.W. 4th Street
Ft. Lauderdale, Florida, 33312

August 24, 1970

IMPLEMENTATION OF THE FIFTH CIRCUIT COURT OF APPEALS AUGUST 18, 1970, ORDER

Alternatives are attached to implement the above Order as directed by the Honorable Judge Cabot for the August 24, 1970, hearing. It should be stated that we could cluster the schools a little better than those identified by Court.

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
1320 S.W. 4th Street
Ft. Lauderdale, Florida, 33312

August 24, 1970

RATIONALE FOR ALTERNATE A

1. Capacity a prior item
2. Black and White ratio as specified by the Court

RATIONALE FOR ALTERNATE B

1. Capacity a priority item
2. Emphasis on a more continuous instructional program
3. Black and White ratio as specified by the Court
4. Minimum of: Transportation
   Teacher transfers
   Pupil reassignments
   Movement of furniture, etc.
   Renovations such as lowering or raising chalkboards, etc.

SOUTH AREA

I. Carver Ranches, Orange-Brook, Lake Forest and Watkins

ALTERNATE A

Carver Ranches	5th and 6th Grades
Orange-Brook	1st and 2nd Grades
Lake Forest	2nd and 3rd Grades
Watkins	3rd and 4th Grades

ALTERNATE B

Carver Ranches	5th and 6th Grades
Orange-Brook	1st, 2nd, 3rd and 4th Grades
Lake Forest	1st, 2nd, 3rd and 4th Grades
Watkins	1st, 2nd, 3rd and 4th Grades

II. Moore, Colbert, Hollywood Central and Hallandale

ALTERNATE A

Hollywood Central	1st and 2nd Grades
Colbert	2nd and 3rd Grades
Hallandale	3rd and 4th Grades
Moore	5th Grades

ALTERNATE B

Moore	5th Grades
Colbert	1st, 2nd, 3rd and 4th Grades
Hollywood Central	1st, 2nd, 3rd and 4th Grades
Hallandale	1st, 2nd, 3rd and 4th Grades

CENTRAL AREA

I. Larkdale, Lauderhill and Castle Hill

ALTERNATE A

Lauderhill	1st and 2nd Grades
Castle Hill	3rd and 4th Grades
Larkdale	5th and 6th Grades

ALTERNATE B

Larkdale	4th and 5th and 6th Grades
Castle Hill	1st, 2nd and 3rd Grades
Lauderhill	1st, 2nd and 3rd Grades

II. Broward Estates, Plantation and Pine Ridge

ALTERNATE A

Pine Ridge	1st Grades
Plantation	2nd and 3rd Grades
Broward Estates	4th, 5th and 6th Grades

ALTERNATE B

Broward Estates	4th, 5th and 6th Grades
Plantation	1st, 2nd and 3rd Grades
Pine Ridge	1st, 2nd and 3rd Grades

III. Sabal Palm, Westwood Heights and Sunset

ALTERNATE A

Sabal Palm	1st, 2nd and 3rd Grades
Westwood Heights	4th and 5th Grades
Sunset	1st, 2nd and 3rd Grades

ALTERNATE B

Sabal Palm	4th and 5th Grades
Sunset	1st, 2nd and 3rd Grades
Westwood Heights	1st, 2nd and 3rd Grades

IV. Lincoln Park, North Fork, Hortt and Riverland

ALTERNATE A

North Fork	1st Grades
Hortt	2nd Grades
Lincoln Park	3rd and 4th Grades
Riverland	5th Grades

ALTERNATE B

Lincoln Park	5th and 6th Grades
North Fork	1st, 2nd, 3rd, and 4th Grades
Hortt	1st, 2nd, 3rd, and 4th Grades
Riverland	1st, 2nd, 3rd, and 4th Grades

V. Walker, North Side and East Side

ALTERNATE A

East Side	1st Grades
North Side	2nd and 3rd Grades
Walker	4th, 5th and 6th Grades

ALTERNATE B

East Side	1st, 2nd and 3rd Grades
North Side	1st, 2nd and 3rd Grades
Walker	4th, 5th and 6th Grades

VI. Dillard, Lauderdale Manors and Wiltons

ALTERNATE A

Dillard ..... 4th, 5th and 6th Grades
Lauderdale Manors ..... 2nd and 3rd Grades
Wilton Manors ..... 1st Grades

ALTERNATE B

Dillard ..... 4th, 5th and 6th Grades
Lauderdale Manors ..... 1st, 2nd and 3rd Grades
Wilton Manors ..... 1st, 2nd and 3rd Grades

VII. Rock Island, Oriole and Lloyd Estates

ALTERNATE A

Lloyd Estates ..... 1st and 2nd Grades
Rock Island ..... 3rd and 4th Grades
Oriole ..... 5th and 6th Grades

ALTERNATE B

Rock Island ..... 5th and 6th Grades
Oriole ..... 1st, 2nd, 3rd and 4th Grades
Lloyd Estates ..... 1st, 2nd, 3rd and 4th Grades

NORTH AREA

PLAN "D" RECOMMENDED

I. Charles Drew, Coconut Creek and Cypress

ALTERNATE A

Charles Drew ..... 5th and 6th Grades
Coconut Creek ..... 3rd and 4th Grades
Cypress ..... 1st and 2nd Grades

ALTERNATE B

Charles Drew ..... 4th, 5th and own 6th Grades
Coconut Creek ..... 1st, 2nd, and 3rd Grades
Cypress ..... 1st, 2nd, 3rd and own 6th Grades

II. Markham, Palmview and Tedder

ALTERNATE A

Markham	5th and 6th Grades
Tedder	3rd and 4th Grades
Palmview	1st and 2nd Grades

ALTERNATE B

Markham	5th and 6th Grades
Tedder	1st, 2nd, 3rd and 4th Grades
Palmview	1st, 2nd, 3rd and 4th Grades

III. Coleman and Pompano Beach

ALTERNATE A

Coleman	1st, 2nd, and 3rd Grades
Pompano Beach	4th, 5th and 6th Grades

ALTERNATE B

Coleman	4th, 5th and 6th Grades
Pompano Beach	1st, 2nd, and 3rd Grades

IV. Sanders Park and Cresthaven

ALTERNATE A

Sanders Park	1st, 2nd and 3rd Grades
Cresthaven	4th, 5th and 6th Grades

ALTERNATE B

Sanders Park	4th, 5th and 6th Grades
Cresthaven	1st, 2nd and 3rd Grades

SOUTHERN DISTRICT COURT APPROVED DESEGRATION PLAN

SCHOOL	CAPACITY			K	1	2	3	4	5	6	
	Permanent	Portable	Tot.								
Carver Ranches	720	90	810	0	122	123	118	127	102	108	
Lake Forest	600	180	780	0	157	155	141	143	166	0	
Orange Brook	720	0	720	0	143	140	114	132	122	30	
Watkins	720	30	750	0	137	136	119	122	120	106	
TOTALS	2710	300	3060	0	559	554	492	524	510	244	28

Alternate: A

AUGUST 18, 1970 COURT ORDERED PAIRING/GROUPING PLAN

SCHOOL	Capacity			Portable		K			1			2			3			4			5			6					
	Perm.	Port.	Tot.	Add	Take	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.
Carver Ranches	720	90	810																		185	325	510	142	102	244	327	427	754
Lake Forest	600	180	780									291	224	291	139	120	259										206	344	550
Orange Brook	720	0	720						208	351	559	142	121	263													350	472	822
Watkins	720	30	750												59	174	233	207	317	524							266	491	751
TOTALS	2760	300	3060						208	351	559	433	345	554	198	294	492	207	317	524	185	325	510	142	102	244	1149	1734	2883

SOUTHERN DISTRICT COURT APPROVED DESEGRATION PLAN

SCHOOL	CAPACITY Permanent	Portable	Total	K	1	2	3	4	5	6	Total	B
Moore	720	0	720	2 units	114	114	112	120	138	0	598	
Colbert	720	0	720	2 units	121	119	125	120	137	0	622	
Hollywood Central	720	0	720	2 units	128	127	126	145	131	0	657	
Hallandale	620	0	620	2 units	108	107	99	102	106	0	522	
TOTALS	2,780	0	2,780	8 units	471	467	462	487	512	0	2,399	

Alternate "A"

AUGUST 18, 1970 COURT ORDERED PAIRING/GROUPING PLAN

SCHOOL	Capacity Perm.	Port.	Tot.	Portable Add	Take	K Blk.	Wh.	Tot.	1 Blk.	Wh.	Tot.	2 Blk.	Wh.	Tot.	3 Blk.	Wh.	Tot.	4 Blk.	Wh.	Tot.	5 Blk.	Wh.	Tot	6 Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	% Black
Moore	720	0	720	0	0																194	318	512				194	318	512	37.89
Colbert	720	0	720	0	0							52	174	226	142	95	237										194	269	463	41.90
Hollywood Central	720	0	720	0	0				167	304	471	114	127	241													281	431	712	39.47
Hallandale	620	0	620	4	0										24	201	225	173	314	487							197	515	712	27.67
TOTALS	2,780	0	2,780	4	0				167	304	471	166	301	467	166	296	462	173	314	487	194	318	512				866	1533	2,399	36.10

SOUTHERN DISTRICT COURT APPROVED DESEGRATION PLAN

SCHOOL	CAPACITY Permanent	Portable	Tot.	K	1	2	3	4	5	6	Total	
Larkdale	720	390	1110		189	190	198	193	203	81	1054	
Lauderhill	720	150	870		172	171	169	179	176	0	867	
Castle Hill	720	0	720		153	154	128	153	152	0	740	
TALS	2160	540	2700		514	515	495	525	531	81	2661	

Alternate: A

AUGUST 18, 1970 COURT ORDERED PAIRING/GROUPING PLAN

SCHOOL	Capacity Perm.	Port.	Tot.	Portable Add	Take	K Blk.	Wh.	Tot.	1 Blk.	Wh.	Tot.	2 Blk.	Wh.	Tot.	3 Blk.	Wh.	Tot.	4 Blk.	Wh.	Tot.	5 Blk.	Wh.	Tot.	6 Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	% Blac
arkdale	720	390	1110	0	13																245	286	531	81	0	81	326	286	612	53.3
auderhill	720	150	870	11	0				231	283	514	232	283	515													463	566	1029	45.0
astle ill	720	0	720	10	0										240	255	495	235	290	525							475	545	1020	46.7
Alg	2160	540	2700	21	13				231	283	514	232	283	515	240	255	495	235	290	525	245	286	531	81	0	81	1264	1397	2661	47.5

SOUTHERN DISTRICT COURT APPROVED DESEGRATION PLAN

SCHOOL	CAPACITY Permanent	Portable	Tot.	K	1	2	3	4	5	6	Total	
Broward Estates	720	270	990		173	173	171	151	156	110	934	
Plantation	600	150	750		143	143	157	168	162		773	
Pine Ridge	480	60	540		102	99	80	120	113		514	0
TOTALS	1800	480	2280		418	415	408	439	431	110	2221	

Alternate: A

AUGUST 18, 1970 COURT ORDERED PAIRING/GROUPING PLAN

	Capacity		Portable			K			1			2			3			4			5			6					
SCHOOL	Perm.	Port.	Tot.	Add	Take	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	% Blacks
Broward Estates	720	270	990	0	0													172	267	439	172	259	431	96	14	110	440	540	980	44.9
Plantation	600	150	750	3	0							182	233	415	182	226	408										364	459	823	44.2
Pine Ridge	480	60	540	0	2				182	236	418																182	236	418	43.55
TOTALS	1800	480	2280	3	2				182	236	418	182	233	415	182	226	408	172	267	439	172	259	431	96	14	110	986	1235	2221	44.39

SOUTHERN DISTRICT COURT APPROVED DESEGRATION PLAN

SCHOOL	CAPACITY			K	1	2	3	4	5	6	Total	% Blac
	Permanent	Portable	Tot.									
Sabal Palm	720	0	720	2 Units	138	138	135	135	111	0	657	96.1
Westwood Heights	720	60	780		163	159	143	155	159	0	779	23.6
Sunset	720	0	720		112	114	116	127	114	0	583	0
TOTALS	2160	60	2220	2 Units	413	411	394	417	384	0	2019	

Alternate: A

AUGUST 18, 1970 COURT ORDERED PAIRING/GROUPING PLAN

SCHOOL	Capacity		Portable			K			1			2			3			4			5			6						
	Perm.	Port.	Tot.	Add	Take	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	% Black
Sabal Palm	720	0	720	0	0				152	68	220	151	66	217	149	58	207										452	192	644	70.19
Westwood Heights	720	60	780	1	0													167	250	417	142	242	384				309	492	801	38.57
Sunset	720	0	720	0	0				18	175	193	19	175	194	18	169	187										55	519	574	9.58
TOTALS	2160	60	2220	1	0				170	243	413	170	241	411	167	217	394	167	250	417	142	242	384				816	1203	2019	40.42

SOUTHERN DISTRICT COURT APPROVED DESEGRATION PLAN

SCHOOL	CAPACITY Permanent	Portable	Tot	K	1	2	3	4	5	6	Total	% Black
LINCOLN PARK	480	480	960	-	188	188	168	181	167	0	892	100
SOUTH FORK	720	0	720	1 Unit	78	74	63	59	59	60	393	41.2
SCOTT	360	0	360	1 Unit	62	62	51	58	53	0	286	0
HOLLAND	720	0	720	-	136	136	131	134	154	0	691	19.0
TOTALS	2280	480	2760	2 Units	464	460	413	432	433	60	2262	-----

ALTERNATE A

AUGUST 18, 1970 COURT ORDERED PAIRING/GROUPING PLAN

SCHOOL	Capacity Perm.	Port.	Tot.	Portable Add	Take	K Blk.	Wh.	Tot.	1 Blk.	Wh.	Tot.	2 Blk.	Wh.	Tot.	3 Blk.	Wh.	Tot.	4 Blk.	Wh.	Tot.	5 Blk.	Wh.	Tot.	6 Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	% Black
LINCOLN PK.	480	480	960	0	0										220	193	413	233	199	432							453	392	845	53.61
SOUTH FORK	720	0	720	0	0				240	224	464																240	224	464	51.72
SCOTT	360	0	360	4	0							240	220	460													240	220	460	52.17
HOLLAND	720	0	720	0	0																219	214	433				219	214	433	50.58
TOTALS	2280	480	2760	4	0				240	224	464	240	220	460	220	193	413	233	199	432	219	214	433				1152	1050	2202	52.32

SOUTHERN DISTRICT COURT APPROVED DESEGRATION PLAN

SCHOOL	CAPACITY Permanent	Portable	Tot.	K	1	2	3	4	5	6	Total	Bl'c'
Walker	750	0	750		151	142	119	124	96	101	733	10
North Side	690	0	690		136	134	138	126	128	0	662	
East Side	450	120	570		109	109	111	115	97	0	541	
TALS	1890	120	2010		396	385	368	365	321	101	1936	

Alternate: A

AUGUST 18, 1970 COURT ORDERED PAIRING/GROUPING PLAN

Sch.	Capacity Perm.	Portable Port.	Tot.	Add	Take	K Blk.	Wh.	Tot.	1 Blk.	Wh.	Tot.	2 Blk.	Wh.	Tot.	3 Blk.	Wh.	Tot.	4 Blk.	Wh.	Tot.	5 Blk.	Wh.	Tot.	6 Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	% Black
lker	750	0	750	1	0													163	202	365	135	186	321	101	0	101	399	388	787	50.69
rth de	690	0	690	3	0							183	202	385	159	209	368										342	411	753	45.42
st de	450	120	570	0	2				192	204	396																192	204	396	48.48
Al	1890	120	2010	4	2				192	204	396	183	202	385	159	209	368	163	202	365	135	186	321	101	0	101	933	1003	1936	48.19

SOUTHERN DISTRICT COURT APPROVED DESEGRATION PLAN

SCHOOL	CAPACITY Permanent	Portable	Tot.	K	1	2	3	4	5	6	Total	
Dillard	840	180	1020		200	199	160	173	153	100	985	9
Lauderdale Manors	780	0	780	2 units	140	137	133	130	124	0	664	(
Wilton Manors	720	0	720	2 units	108	108	108	108	121	0	553	(
TOTALS	2340	180	2520	4 units	448	444	401	411	398	100	2202	

AUGUST 18, 1970 COURT ORDERED PAIRING/GROUPING PLAN

Alternate A

SCHOOL	Capacity Perm.	Port.	Tot.	Portable Add	Take	K Blk.	Wh.	Tot.	1 Blk.	Wh.	Tot.	2 Blk.	Wh.	Tot.	3 Blk.	Wh.	Tot.	4 Blk.	Wh.	Tot.	5 Blk.	Wh.	Tot.	6 Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	% Blac
Dillard	840	180	1020															173	238	411	153	245	398	100	0	100	426	483	909	46.86
Lauderdale Manors	780	0	780									199	245	444	160	241	401										359	486	345	42.49
Wilton Manors	720	0	720						200	248	448																200	248	448	44.64
TOTALS	2340	180	2520						200	248	448	199	245	444	160	241	401	173	238	411	153	245	398	100	0	100	985	1217	2202	44.73

SOUTHERN DISTRICT COURT APPROVED DESEGRATION PLAN

SCHOOL	CAPACITY Permanent	Portable	Tot.	K	1	2	3	4	5	6	Total	[illegible]
Rock Island	450	270	720		111	110	125	118	122	106	692	[illegible]
Oriole	0	540	540		101	103	111	111	98	0	524	[illegible]
Lloyd Estates	480	210	690		116	116	133	144	125	28	662	[illegible]
TOTALS	930	1020	1950		328	329	369	373	345	134	1878	

Alternate: A

AUGUST 18, 1970 COURT ORDERED PAIRING/GROUPING PLAN

School	Capacity Perm.	Port.	Tot.	Portable Add	Take	K Blk.	Wh.	Tot.	1 Blk.	Wh.	Tot.	2 Blk.	Wh.	Tot.	3 Blk.	Wh.	Tot.	4 Blk.	Wh.	Tot.	5 Blk.	Wh.	Tot.	6 Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	% Blac[illegible]
Rock Island	450	270	720	1	0										125	244	369	118	255	373							243	499	742	32.7[illegible]
Oriole	0	540	540	0	2																122	223	345	111	23	134	233	246	479	48.6[illegible]
Lloyd Estates	480	210	690	0	1				111	217	328	110	219	329													221	436	657	33.6[illegible]
[illegible]	930	1020	1950	1	3				111	217	328	110	219	329	125	244	369	118	255	373	122	223	345	111	23	134	697	1181	1878	37.1[illegible]

SOUTHERN DISTRICT COURT APPROVED DESEGRATION PLAN

SCHOOL	CAPACITY Permanent	Portable	Tot.	K	1	2	3	4	5	6	Total	% Bla
Drew	660	390	1050		162	162	177	176	175	179	1031	98.3
Coconut Creek	720	0	720		153	152	149	139	146	0	739	1.4
Express	720	0	720		116	114	108	128	127	132	725	0
TOTALS	2100	390	2490		431	428	434	443	448	311	2495	

828a

Alternate:A.

AUGUST 18, 1970 COURT ORDERED PAIRING/GROUPING PLAN

SCHOOL	Capacity Perm.	Port.	Tot.	Portable Add	Take	K Blk.	Wh.	Tot.	1 Blk.	Wh.	Tot.	2 Blk.	Wh.	Tot.	3 Blk.	Wh.	Tot.	4 Blk.	Wh.	Tot.	5 Blk.	Wh.	Tot.	6 Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	% Black
Drew	660	390	1050	0	9																174	274	448	176	135	311	350	409	759	46.11
Coconut Creek	720	0	720	5	0										176	258	434	175	268	443							351	526	877	40.02
Express	720	0	720	5	0				162	269	431	161	267	428													323	536	859	37.60
TOTALS	2100	390	2490	10	9				162	269	431	161	267	428	176	258	434	175	268	443	174	274	448	176	135	311	1024	1471	2495	41.04

SOUTHERN DISTRICT COURT APPROVED DESEGRATION PLAN

SCHOOL	CAPACITY			K	1	2	3	4	5	6	Total	% Black
	Permanent	Portable	Tot.									
Parkham	600	0	600.		114	112	98	103	87	82	596	89.9
Palmview	720	0	720		113	112	99	111	140	109	684	29.3
Pedder	720	0	720		124	123	125	130	126	0	628	0
TOTALS	2040	0	2040		351	347	322	344	353	191	1908	

Alternate: A

AUGUST 18, 1970 COURT ORDERED PAIRING/GROUPING PLAN

SCHOOL	Capacity		Portable			K			1			2			3			4			5			6						% Black
	Perm.	Port.	Tot.	Add	Take	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	
Parkham	600	0	600	0	0																113	240	353	105	86	191	218	326	544	40.07
Palmview	720	0	720	1	0				137	214	351	135	212	347													272	426	698	38.96
Pedder	720	0	720	0	0										121	201	322	126	218	344							247	419	666	37.09
TOTALS	2040	0	2040	1	0				137	214	351	135	212	347	121	201	322	126	218	344	113	240	353	105	86	191	737	1171	1908	38.63

83a

SOUTHERN DISTRICT COURT APPROVED DESEGRATION PLAN

SCHOOL	CAPACITY Permanent	Portable	Tot	K	1	2	3	4	5	6	Total	Bl
COLEMAN	900	0	900	4	127	125	96	92	89	97	626	96.0
POMPANO BEACH	720	60	780	-	99	100	104	117	119	145	683	2
TOTALS	1620	60	1680	4	226	225	200	209	207	242	1309	-

ALTERNATE A

AUGUST 18, 1970 COURT ORDERED PAIRING/GROUPING PLAN

SCHOOL	Capacity Perm.	Port.	Portable Tot.	Add	Take	K Blk.	Wh.	Tot.	1 Blk.	Wh.	Tot.	2 Blk.	Wh.	Tot.	3 Blk.	Wh.	Tot.	4 Blk.	Wh.	Tot.	5 Blk.	Wh.	Tot.	6 Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	% Black
COLEMAN	900	0	900	-	-	4 Units			125	101	226	123	102	225	95	105	200										343	308	651	52.68
MPANO BEACH	720	60	780	-	-	2 Units												91	118	209	89	118	207	98	144	242	278	380	658	42.25
OTALS	1620	60	1680	-	-	6 Units			125	101	226	123	102	225	95	105	200	91	118	209	89	118	207	98	144	242	621	688	1309	47.44

SOUTHERN DISTRICT COURT APPROVED DESEGRATION PLAN

SCHOOL	CAPACITY Permanent	Portable	Tot.	K	1	2	3	4	5	6	Total	% Black
Borders Park	720	0	720		109	109	112	130	125	129	714	93.2
Crosthaven	720	0	720		112	113	125	109	132	114	705	0
TOTALS	1440	0	1440		221	222	237	239	257	243	1419	

Alternate: A

AUGUST 18, 1970 COURT ORDERED PAIRING/GROUPING PLAN

SCHOOL	Capacity Perm.	Portable Port.	Tot.	Add	Take	K Blk.	K Wh.	K Tot.	1 Blk.	1 Wh.	1 Tot.	2 Blk.	2 Wh.	2 Tot.	3 Blk.	3 Wh.	3 Tot.	4 Blk.	4 Wh.	4 Tot.	5 Blk.	5 Wh.	5 Tot.	6 Blk.	6 Wh.	6 Tot.	Blk.	Wh.	Tot.	% Black
Borders Park	720	0		1					101	120	221	101	121	222	104	133	237										306	374	680	45.0
Crosthaven	720	0																122	117	239	117	140	257	121	122	243	360	379	739	48.71
TOTALS	1440	0		1					101	120	221	101	121	222	104	133	237	122	117	239	117	140	257	121	122	243	666	753	1419	46.93

SOUTHERN DISTRICT COURT APPROVED DESEGREGATION PLAN

SCHOOL	CAPACITY Permanent	Portable	Tot.	K	1	2	3	4	5	6	Total	Bl
Carver Ranches	720	90	810	0	122	123	118	127	102	108	700	9
Lake Forest	600	180	780	0	157	155	141	143	166	0	762	1
Orange-Brook	720	0	720	0	143	140	114	132	122	30	681	1
Watkins	720	30	750	0	137	136	119	122	120	106	740	2
TOTALS	2760	300	3060	0	559	554	492	524	10	244	2883	

Alternate: B

AUGUST 18, 1970 COURT ORDERED PAIRING/GROUPING PLAN

	Capacity			Portable		K			1			2			3			4			5			6						
SCHOOL	Perm.	Port.	Tot.	Add	Take	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	% Black
Carver Ranches	720	90	810																		185	325	510	142	102	244	327	427	754	43.37
Lake Forest	600	180	780						66	132	198	66	130	196	64	116	180	67	119	186							263	497	760	34.61
Orange Brook	720	0	720						64	120	184	64	117	181	62	91	153	65	109	174							255	437	692	36.84
Watkins	720	30	750						78	99	177	79	98	177	72	87	159	75	89	164							304	373	677	44.9
TOTALS	2760	300	3060						208	351	559	209	345	554	198	294	492	207	317	524	185	325	510	142	102	244	1149	1734	2883	39.85

SOUTHERN DISTRICT COURT APPROVED DESEGRATION PLAN

SCHOOL	CAPACITY Permanent	Portable	Total	K	1	2	3	4	5	6	Total	Bl
Moore	720	0	720	2 units	114	114	112	120	138	0	598	1
Colbert	720	0	720	2 units	121	119	125	120	137	0	622	2
Hollywood Central	720	0	720	2 units	128	127	126	145	131	0	657	
Hallandale	620	0	620	2 units	108	107	99	102	106	0	522	2
TOTALS	2,780	0	2,780	8 units	471	467	462	487	512	0	2,399	

Alternate "B"

AUGUST 18, 1970 COURT ORDERED PAIRING/GROUPING PLAN

SCHOOL	Capacity Perm.	Port.	Tot.	Portable Add	Take	K Blk.	Wh.	Tot.	1 Blk.	Wh.	Tot.	2 Blk.	Wh.	Tot.	3 Blk.	Wh.	Tot.	4 Blk.	Wh.	Tot.	5 Blk.	Wh.	Tot.	6 Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	% Black
Moore	720	0	720	0	0																194	318	512				194	318	512	37.89
Colbert	720	0	720	0	0				67	92	159	66	91	157	67	95	162	69	91	160							269	369	638	42.16
Hollywood Central	720	0	720	0	0				38	128	166	38	127	165	38	126	164	40	145	185							154	526	680	22.65
Hallandale	620	0	620	0	0				62	84	146	62	83	145	61	75	136	64	78	142							249	320	569	43.76
TOTALS	2,780	0	2,780	0	0				167	304	471	166	301	467	166	296	462	173	314	487	194	318	512				866	1533	2,399	36.10

SOUTHERN DISTRICT COURT APPROVED DESEGRATION PLAN

SCHOOL	CAPACITY Permanent	Portable	Tot.	K	1	2	3	4	5	6	Total	B
Larkdale	720	390	1110		189	190	198	193	203	81	1054	1
Lauderhill	720	150	870		172	171	169	179	176	0	867	
Castle Hill	720	0	720		153	154	128	153	152	0	740	
TALS	2160	540	2700		514	515	495	525	531	81	2661	

Alternate: B

AUGUST 18, 1970 COURT ORDERED PAIRING/GROUPING PLAN

	Capacity			Portable		K			1			2			3			4			5			6						
	Perm.	Port.	Tot.	Add	Take	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	% Blac
Larkdale	720	390	1110	1	0													235	290	525	245	286	531	81	0	81	561	576	1137	49.3
Lauderhill	720	150	870	0	2				120	147	267	120	146	266	120	144	244										364	437	801	45.4
Castle Hill	720	0	720	0	0				111	136	247	112	137	249	116	111	227										339	384	723	46.8
TALS	2160	540	2700	1	2				231	283	514	232	283	516	236	255	471	235	290	525	245	286	531	81	0	81	1264	1397	2661	47.5

SOUTHERN DISTRICT COURT APPROVED DESEGRATION PLAN

SCHOOL	CAPACITY Permanent	Portable	Tot.	K	1	2	3	4	5	6	Total	%
Broward Estates	720	270	990		173	173	171	151	156	110	934	1.
Plantation	600	150	750		143	143	157	168	162		773	11.
Pine Ridge	480	60	540		102	99	80	120	113		514	0
TALS	1800	480	2280		418	415	408	439	431	110	2221	

Alternate: B

AUGUST 18, 1970 COURT ORDERED PAIRING/GROUPING PLAN

SCHOOL	Capacity Perm.	Port.	Tot.	Portable Add	Take	K Blk.	Wh.	Tot.	1 Blk.	Wh.	Tot.	2 Blk.	Wh.	Tot.	3 Blk.	Wh.	Tot.	4 Blk.	Wh.	Tot.	5 Blk.	Wh.	Tot.	6 Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	% Blac
Broward Estates	720	270	990	0	0													172	267	439	172	259	431	96	14	110	440	540	980	44.9
Plantation	600	150	750	0	1				104	126	230	104	125	229	104	139	243										312	390	702	44.4
Pine Ridge	480	60	540	0	0				78	110	188	78	108	186	78	87	165										234	305	539	43.4
TALS	1800	480	2280	0	1				182	236	418	182	233	415	182	226	408	172	267	439	172	259	431	96	14	110	986	1235	2221	44.3

SOUTHERN DISTRICT COURT APPROVED DESEGRATION PLAN

SCHOOL	CAPACITY Permanent	Portable	Tot.	K	1	2	3	4	5	6	Total	% Blc
Sabal Palm	720	0	720	2 Units	138	138	135	135	111	0	657	96.1
Westwood Heights	720	60	780		163	159	143	155	159 j	0	779	23.(
Sunset	720	0	720		112	114	116	127	114	0	583	0
TOTALS	2160	60	2220	2 Units	413	411	394	417	384	0	2019	

Alternate: B

AUGUST 18, 1970 COURT ORDERED PAIRING/GROUPING PLAN

SCH.	Capacity Perm.	Port.	Tot.	Portable Add	Take	K Blk.	Wh.	Tot.	1 Blk.	Wh.	Tot.	2 Blk.	Wh.	Tot.	3 Blk.	Wh.	Tot.	4 Blk.	Wh.	Tot.	5 Blk.	Wh.	Tot.	6 Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	% Black
abal alm	720	0	720	2	0													167	250	437	142	242	384				309	492	801	38.58
stwood ights	720	60	780	0	2				104	128	232	103	125	228	102	109	211										309	362	671	46.05
unset	720	0	720	0	0				66	115	181	67	116	183	65	118	183										198	349	547	36.20
TALS	2160	60	2260						170	243	413	170	241	411	167	227	394	167	250	437	142	242	384				816	1203	2019	40.42

SOUTHERN DISTRICT COURT APPROVED DESEGRATION PLAN

SCHOOL	CAPACITY Permanent	Portable	Total	K	1	2	3	4	5	6	Total	B
Lincoln Park	480	480	960	-	188	188	168	181	167	0	892	1
North Fork	720	0	720	1 unit	78	74	63	59	59	60	393	
Hortt	360	0	360	1 unit	62	62	51	58	53	0	286	
Riverland	720	0	720	-	136	136	131	134	154	0	691	
ALLS	2,280	480	2,760	2 units	464	460	413	432	433	60	2,262	

Alternate "B" AUGUST 18, 1970 COURT ORDERED PAIRING/GROUPING PLAN

	Capacity		Portable			K			1			2			3			4			5			6						
Sch.	Perm.	Port.	Tot.	Add	Take	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	% Black
Lincoln Park	480	480	960		2																219	214	433	27	33	60	246	247	493	50.0
North Park	720		720		2				90	51	141	90	47	137	83	36	119	87	32	119							350	166	516	67.8
Hortt	360		360	7					62	62	124	62	62	124	56	51	107	61	58	119							241	233	474	50.8
Riverland	720		720	2					88	111	199	88	111	199	81	106	187	85	109	194							342	437	779	43.9
ALLS	2,280	480	2760	9	2	2 units			240	224	464	240	220	460	220	193	413	233	199	432	219	214	433	27	33	60	1179	1083	2,262	52.1

SOUTHERN DISTRICT COURT APPROVED DESEGRATION PLAN

SCHOOL	CAPACITY			K	1	2	3	4	5	6	Total	% Bla
	Permanent	Portable	Tot.									
Walker	750	0	750		151	142	119	124	96	101	733	1 .0
North Side	690	0	690		136	134	138	126	128		662	1 .0
East Side	450	120	570		109	109	111	115	97		541	1 .0
TOTALS	1890	120	2010		396	385	368	365	321	101	1936	

AUGUST 18, 1970 COURT ORDERED PAIRING/GROUPING PLAN

Alternate B

SCHOOL	Capacity			Portable		K			1			2			3			4			5			6			Blk.	Wh.	Tot.	% Bla
	Perm.	Port.	Tot.	Add	Take	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.				
Walker	750	0	750	1														163	202	365	135	186	321	101	0	101	399	388	787	50.7
North Side	690	0	690						99	113	212	94	111	205	81	116	197										274	340	614	44.6
East Side	450	120	570						93	91	184	89	91	180	78	93	171										260	275	535	48.6
TOTALS	1890	120	2010	1					192	204	396	183	202	385	159	209	368	163	202	365	135	186	321	101	0	101	933	1003	1936	48.1

SOUTHERN DISTRICT COURT APPROVED DESEGRATION PLAN

SCHOOL	CAPACITY Permanent	Portable	Tot.	K	1	2	3	4	5	6	Total	% Blac
Dillard	840	180	1020	0	200	199	160	173	153	100	985	99.6
Lauderdale Manors	780	0	780	2 Units	140	137	133	130	124	0	664	0
Wilton Manors	720	0	720	2 Units	108	108	108	108	121	0	553	0
TOTALS	2340	180	2520	4 Units	448	444	401	411	398	100	2202	

Alternate: B

AUGUST 18, 1970 COURT ORDERED PAIRING/GROUPING PLAN

School	Capacity Perm.	Port.	Tot.	Portable Add	Take	K Blk.	Wh.	Tot.	1 Blk.	Wh.	Tot.	2 Blk.	Wh.	Tot.	3 Blk.	Wh.	Tot.	4 Blk.	Wh.	Tot.	5 Blk.	Wh.	Tot.	6 Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	% Black
Dillard	840	180	1020	0	3													173	238	411	153	245	398	100	0	100	426	483	909	46.86
Lauderdale Manors	780	0	780	0	0				100	140	240	100	137	237	80	133	213										280	410	690	40.58
Wilton Manors	720	0	720	0	0				100	108	208	99	108	207	80	108	188										279	324	603	46.27
TOTALS	2340	180	2520	0	3				200	248	448	199	245	444	160	241	401	173	238	411	153	245	398	100	0	100	985	1217	2202	44.73

SOUTHERN DISTRICT COURT APPROVED DESEGRATION PLAN

SCHOOL	CAPACITY Permanent	Portable	Tot.	K	1	2	3	4	5	6	Total	%
Rock Island	450	270	720		111	110	125	118	122	106	692	92.
Oriole	0	540	540		101	103	111	111	98	0	524	0
Lloyd Estates	480	210	690		116	116	133	144	125	28	662	8.
TOTALS	930	1020	1950		328	329	369	373	345	134	1878	

Alternate: B

AUGUST 18, 1970 COURT ORDERED PAIRING/GROUPING PLAN

SCHOOL	Capacity Perm.	Portable Port.	Tot.	Add	Take	K Blk.	K Wh.	K Tot.	1 Blk.	1 Wh.	1 Tot.	2 Blk.	2 Wh.	2 Tot.	3 Blk.	3 Wh.	3 Tot.	4 Blk.	4 Wh.	4 Tot.	5 Blk.	5 Wh.	5 Tot.	6 Blk.	6 Wh.	6 Tot.	Blk.	Wh.	Tot.	% Black
Rock Island	450	270	720	0	8																122	223	345	111	23	134	233	246	479	48.66
Oriole	0	540	540	4	0				50	106	156	50	108	158	58	116	174	54	116	170							212	446	658	32.22
Lloyd Estates	480	210	690	3	0				61	111	172	60	111	161	67	128	195	64	139	203							252	489	741	34.01
TALS	930	1020	1950	7	8				111	217	328	110	119	319	125	244	369	118	255	373	122	223	345	111	23	134	697	1181	1878	37.11

SOUTHERN DISTRICT COURT APPROVED DESEGRATION PLAN

SCHOOL	CAPACITY Permanent	Portable		K	1	2	3	4	5	6	Total	% Blac
Drew	660	390	1050		162	162	177	176	175	179	1031	98.3
Coconut Creek	720	0	720		153	152	149	139	146	0	739	1.4
Cypress	720	0	720		116	114	108	128	127	133	725	0
TALS	2100	390	2490		431	428	434	443	448	311	2495	

Alternate: B

AUGUST 18, 1970 COURT ORDERED PAIRING/GROUPING PLAN

	Capacity		Portable			K			1			2			3			4			5			6						
L.	Perm.	Port.	Tot.	Add	Take	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	% Black
w	660	390	1050	1	0													175	268	443	174	274	448	176	3	179	525	545	1070	49.07
anut k	720	0	720	0	0				82	152	234	81	151	232	89	149	238										252	452	704	35.80
press	720	0	720	0	0				80	117	197	80	116	196	87	109	196							0	132	132	247	474	721	34.26
LS	2100	390	2490	1	0				162	269	431	161	267	428	176	258	434	175	268	443	174	274	448	176	135	311	1024	1471	2495	41.04

SOUTHERN DISTRICT COURT APPROVED DESEGRATION PLAN

SCHOOL	CAPACITY Permanent	Portable	Tot.	K	1	2	3	4	5	6	Total	% Black
[illegible]rham	600	0	600		114	112	98	103	87	82	596	89.9
[illegible]view	720	0	720		113	112	99	111	140	109	684	29.3
[illegible]der	720	0	720		124	123	125	130	126	0	628	0
[illegible]S	2040	0	2040		351	347	322	344	353	191	1908	

AUGUST 18, 1970 COURT ORDERED PAIRING/GROUPING PLAN

[illegible]ternate: B

SCHOOL	Capacity Perm.	Portable Port.	Tot.	Add	Take	K Blk.	K Wh.	K Tot.	1 Blk.	1 Wh.	1 Tot.	2 Blk.	2 Wh.	2 Tot.	3 Blk.	3 Wh.	3 Tot.	4 Blk.	4 Wh.	4 Tot.	5 Blk.	5 Wh.	5 Tot.	6 Blk.	6 Wh.	6 Tot.	Blk.	Wh.	Tot.	% Black
[illegible]																					113	240	353	105	86	191	218	326	544	40.07
[illegible]kin[illegible]n	600	0	600	0	0																						326	323	649	50.23
[illegible]rview	720	0	720	0	0				85	85	170	84	84	168	77	71	148	80	83	163							193	522	715	26.99
[illegible]der	720	0	720	0	0				52	129	181	51	128	179	44	130	174	46	135	181										
[illegible]	2040	0	2040	0	0				137	214	351	135	212	347	121	201	322	126	218	344	113	240	353	105	86	191	737	1171	1908	38.62

SOUTHERN DISTRICT COURT APPROVED DESEGRATION PLAN

SCHOOL	CAPACITY Permanent	Portable	Tot	K	1	2	3	4	5	6	Total	% Black
[illegible]MAN	900	0	900	4 K	127	125	96	92	89	97	626	96.0
[illegible]NO BEACH	720	60	780	Except 2 Child	99	100	104	117	119	145	683	2.9
[illegible]LS	1620	60	1680	4 K 2 Ex.Child	226	225	200	209	207	242	1309	----

LT[illegible]NATE B

AUGUST 18, 1970 COURT ORDERED PAIRING/GROUPING PLAN

	Capacity		Portable			K			1			2			3			4			5			6						
	Perm.	Port.	Tot.	Add	Take	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	Blk.	Wh.	Tot.	% Black
[illegible]N	900	0	900	0	0	4	K's											91	118	209	89	118	207	98	144	242	278	380	658	42.25
[illegible]	720	60	780	0	0				125	101	226	123	102	225	95	105	200										343	308	651	52.68
[illegible]	1620	60	1680	0	0	4	Units		125	101	226	123	102	225	95	105	200	91	118	209	89	118	207	98	144	242	621	688	1309	47.44

SOUTHERN DISTRICT COURT APPROVED DESEGREGATION PLAN

SCHOOL	CAPACITY Permanent	Portable	Tot.	K	1	2	3	4	5	6	Total	Bl
Sanders Park	720	0	720		109	109	112	130	125	129	714	93
Crosthaven	720	0	720		112	113	125	109	132	114	705	0
TOTALS	1440	0	1440		221	222	237	239	257	243	1419	

Alternate: B

AUGUST 18, 1970 COURT ORDERED PAIRING/GROUPING PLAN

SCHOOL	Capacity Perm.	Portable Port.	Tot.	Add	Take	K Blk.	K Wh.	K Tot.	1 Blk.	1 Wh.	1 Tot.	2 Blk.	2 Wh.	2 Tot.	3 Blk.	3 Wh.	3 Tot.	4 Blk.	4 Wh.	4 Tot.	5 Blk.	5 Wh.	5 Tot.	6 Blk.	6 Wh.	6 Tot.	Blk.	Wh.	Tot.	% Black
anders ark	720	0	720	1	0													122	117	239	117	140	257	121	122	243	360	379	739	48.71
resthaven	720	0	720	0	0				101	120	221	101	121	222	104	133	237										306	374	680	45.00
TALS	1440	0	1440	1	0				101	120	221	101	121	222	104	133	237	122	117	239	117	140	257	121	122	243	666	753	1419	46.93

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

No. 70-31-Civ-TC

FREDERICK ALLEN and TIMOTHY ALLEN, minors, etc., et al.,
Plaintiffs,

v.

BOARD OF PUBLIC INSTRUCTION OF BROWARD COUNTY, FLORIDA, etc., et al.,

Defendants.

Order

Hearing was held before the court on September 2, 1970, from 4:30 to 8:45 P.M. pursuant to the court's order of August 28, 1970, directing the School Board and School Superintendent to (1) make certain alterations in the School Superintendent's implementation report of August 24, 1970, to comply with the Fifth Circuit Court's school desegregation plan of August 18, 1970, and (2) to submit to the court a list of necessary matters yet remaining to be done and the time needed to accomplish them in order to implement the August 18, 1970, order of the Fifth Circuit Court of Appeals and as implemented by orders of this court. Hearing was also had on the motion of intervenor T. Minton Baughman, of intervenor Arthur Allen Harris, et al., and Vinkemulder and Murray, et al.

The School Superintendent submitted revised plans for assignment of classes to the various grouped/paired schools (Defendants' Exhibit 6) and no objection was made by other parties to such revised assignment schedules.

The School Superintendent submitted a plan for implementation of the Fifth Circuit Court of Appeals order of August 18, 1970 (Defendants' Exhibit 5). This plan embraces some 35 pages and in addition contains charts and much detailed data as to what is necessary to implement the plan. Various department heads on the school board staff then testified in support thereof and were interro-

gated by the court and cross-examined by plaintiffs' counsel. Although the written plan calls for implementation costs of more than 2.6 million dollars and a minimum implementation may be had at much lower cost and in far less time.

Most of the implementation of the Fifth Circuit Court plan may be made on an emergency basis within the thirty days time suggested by plaintiffs, although, of course, the orderly preparation for the education of the children in such areas as adjustment of curriculum and in-service teacher training cannot be carried out within that time. Particularly distressing, for example, is the situation that arises in the grouping of schools in which one is presently used predominantly for children of migrant laborers under a special federal grant, where the teachers have been specially trained, and curriculum devised to supply deficiencies in culturally deprived children, many of whom are slow learners; where the second school in the group was built without classroom partitions under the new "open school" concept, coupled with team teaching and specially trained teachers and substantial obliteration of grade levels as applied to the teaching materials and curriculum so the child may progress in accordance with his capacity and inclination; and where a third school, of older vintage, uses the traditional grade levels and concepts. There does not appear to be sufficient discretion left to this court under the Fifth Circuit order to make allowances for these educational differences.

One area which makes the immediate implementation of the Fifth Circuit Court order physically impossible is that of transportation of students, unless of course the school children who are more than two miles from the school which they will attend and thus under state statute entitled to free transportation, shall be left to furnish their own transportation.

The system now transports 33,000 students with 102 busses of 75 student capacity each on regular routes, and 30

busses of 60 student capacity and with special lifts and equipment for the transportation of physically and mentally handicapped children. These special busses also carry regular students in order to make maximum use of capacity. There are 20 spare busses of the regular model and two spares of the special model. These spares are used to substitute for busses undergoing maintenance and for emergency runs when busses are broken down. The busses each make five round trips per day, the opening and closing times of the various schools being staggered in order to make this maximum utilization of the busses possible. This year the drivers began leaving on their routes at 5:00 and 5:30 A.M. and the last of them return at 6:00 and 6:30 P.M., the drivers averaging eight and one-half to nine hours per day on the road. There are now 152 drivers. All are women except one. There are 17 new drivers who have just completed the required 30 hours training and are ready to begin driving on a bus route; two drivers will take qualifying road tests this week; one applicant has passed her aptitude, health, etc., requirements and is ready to begin training. The hiring by the transportation department is a continuing proposition and there are no pending applications by qualified persons although much advertising for drivers is done. The drivers receive $2.40 per hour in the beginning with increases up to $3.75 per hour.

The additional students to be transported under the Fifth Circuit Court plan will be 11,671, requiring 57 new busses, each to be used on three round trips per day. All of these students meet the two mile statutory requirement, although there are many students residing less than two miles from their schools who should be bussed because of the safety factors.

The last busses ordered by the School Board were delivered in eight months though prior orders took one year for delivery. Busses could be leased by the School Board on a temporary basis but none would be available in less than four months according to the information the school

transportation supervisor could secure and report to the court in the time available prior to the hearing. The supervisor also reported that none of the local bus or transportation companies she had inquired of could supply the need. It would be reasonable to assume, however, that further wide ranging and determined inquiry may disclose the availability of suitable transportation within some period less than the four months reported. The acquisition and training of new drivers must be left to the ingenuity of the School Board and its staff.

In the area of assuring safety to the students, particularly in walking to and from schools, it was necessary in implementing the district court plan of April 30, 1970, to have 26 new traffic signals installed by the various cities and by the county, to build 12 or more sidewalks, to install fencing on certain canals and traffic arteries which presented special dangers to the school children. A similar volume of work in this area must be done to implement the Fifth Circuit Court plan, but it would seem that an all-out application of the school staff to this difficulty would solve most of the problems with the exception of securing new traffic lights by some of the cities by the beginning date for implementation of the Fifth Circuit Court plan.

It would appear that other areas which must be treated to implement the plan can be done on an emergency basis prior to the beginning date for the change-over to the Fifth Circuit Court plan. Accordingly, it is

ORDERED and ADJUDGED that:

1. The amended alternate "A" plans of the School Superintendent submitted August 31, 1970 (Defendants' Exhibit 6) are approved by the court and shall be implemented by the School Board and the School Superintendent.

2. The School Board and the School Superintendent shall immediately take all action necessary or desirable to implement at the earliest possible time the August 18, 1970,

order of the Fifth Circuit Court of Appeals and the orders of this court of August 28, 1970, and this order. The necessary changes shall be made in stages where practical and where such procedure will result in an earlier desegregation of the schools and the establishment of a unitary system of schools; that is, it may be possible to implement student desegregation for one group or pair of schools because of the availability of transportation or for other reasons at an earlier time than the desegregation of another group or pair of schools. In any event the Fifth Circuit Court plan shall be fully implemented not later than November 15, 1970.

3. The petitions to intervene of Baughman and Harris are denied without taking testimony on the merits, and the petition of Vinkemulder and Murray, et al., having been included in the School Superintendent's amended plan, is granted.

DONE and ORDERED at Miami, this 4th day of September, 1970.

/s/ Ted Cabot
TED CABOT
United States District Judge

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Supreme Court, U.S.
FILED
SEP 24 1970
E. ROBERT SEAVER, CLERK

No. 749

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

BOARD OF PUBLIC INSTRUCTION OF BROWARD COUNTY, FLORIDA, a public body organized and existing under the laws of the State of Florida; and WILLIAM C. DRAINER, Superintendent of Public Schools of Broward County, Florida, *Petitioners,*

v.

FREDERICK ALLEN and TIMOTHY ALLEN, minors by W. GEORGE ALLEN, father and next friend; and VON D. MIZELL, President of the National Association for the Advancement of Colored People, and all others similarly situated, *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT AND MOTION TO ADVANCE

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INDEX

	Page
Motion To Advance	1
Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit	3
Opinions Below	4
Jurisdiction	4
Questions Presented	4
Constitutional and Statutory Provisions Involved	5
Statement of Facts	
1. Introduction	6
2. Proceedings Below	6
3. Broward County School System in 1969-70, Before Court-Ordered Desegregation	9
4. District Court's Desegregation Plan	11
5. Court of Appeals' Desegregation Plan	15
6. Implementation of the Court of Appeals' Plan	15
Reasons for Granting the Writ	
Introduction	16
Part I	18
Part II	23
Part III—Summary	31
Conclusion	33

CITATIONS OF AUTHORITIES

Page

TABLE OF CASES:

Alexander v. Holmes County Board of Education, 396 U.S. 19, (1969) 17
Brown v. Board of Education, 347 U.S. 483, (1954) (Brown I) 6, 16, 22
Brown v. Board of Education, 349 U.S. 294, (1955) (Brown II) 7, 16, 31
Ellis v. Orange County, 423 F.2d 203, 5th Cir., (1970).. 14
Green v. County School Board of New Kent County, 391 U.S. 430, (1968) 11, 27
Plessy v. Ferguson, 163 U.S. 537, (1896) 23
Singleton v. Jackson Municipal Separate School District, 5 Cir. 1970, 419 F.2d 1211 (*en banc*), rev'd in part sub nom. Carter v. West Feliciana Parish School Board, 1970, 396 U.S. 290, 90 S.Ct. 608, 24 L.Ed. 2d 477 17
Swann v. Charlotte-Mecklenburg Board of Education (Now on Certiorari before this Court) 21, 30

CONSTITUTIONAL AND STATUTORY PROVISIONS:

Fourteenth Amendment, Section 1 5
42 U.S.C.A. (Chapter 21) Section 2000c 5
42 U.S.C.A. (Chapter 21) Section 2000c-6 (a) (2) 5
Title 28, U.S.C., Section 1343 (3) 6
Title 42, U.S.C., Sections 1983 and 1985 6

OTHER SOURCES:

Fort Lauderdale News, September 7, 1970 19

IN THE

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OCTOBER TERM, 1970

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BOARD OF PUBLIC INSTRUCTION OF BROWARD COUNTY, FLORIDA, a public body organized and existing under the laws of the State of Florida; and WILLIAM C. DRAINER, Superintendent of Public Schools of Broward County, Florida, *Petitioners,*

v.

FREDERICK ALLEN and TIMOTHY ALLEN, minors by W. GEORGE ALLEN, father and next friend; and VON D. MIZELL, President of the National Association for the Advancement of Colored People, and all others similarly situated, *Respondents.*

MOTION TO ADVANCE

Petitioners respectfully move that the Court advance its consideration and disposition of this case. It presents issues of great constitutional significance which require early decision by the Court for the reasons explained in the annexed petition for a writ of certiorari.

WHEREFORE, petitioners pray that the Court:

1. Advance consideration of the petition for a writ of certiorari and any cross-petition or other response thereto during the October Term, 1970.

2. If the Court determines to grant the petition for writ of certiorari, arrange such procedures as will permit early decision on the merits as the Court may deem appropriate. If the Court decides to hear argument, it is suggested that the Court consider the case on the original record without printing, as done by the Court of Appeals, or alternatively to permit reproduction of an appendix by other than standard typographic means.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No.

BOARD OF PUBLIC INSTRUCTION OF BROWARD COUNTY, FLORIDA, a public body organized and existing under the laws of the State of Florida; and WILLIAM C. DRAINER, Superintendent of Public Schools of Broward County, Florida, *Petitioners,*

v.

FREDERICK ALLEN and TIMOTHY ALLEN, minors by W. GEORGE ALLEN, father and next friend; and VON D. MIZELL, President of the National Association for the Advancement of Colored People, and all others similarly situated, *Respondents.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioners pray that a Writ of Certiorari be issued to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above entitled case on August 18, 1970.

OPINIONS BELOW

The opinions of the courts below directly preceding this petition are as follows:

1. Findings of fact, conclusion of law and final judgment of April 30, 1970, unreported, (Appendix hereto 1a).[1]

2. Opinion of the Court of Appeals filed August 18, 1970, not yet reported, (32a).

3. Order of August 28, 1970, unreported, (47a) with attached school superintendent's implementation report of August 24, 1970, (54a).

4. Order of September 4, 1970, unreported, (99a).

JURISDICTION

The judgment of the Court of Appeals was entered on August 18, 1970. The jurisdiction of this Court is invoked under 28 *U.S.C.* Section 1254 (1).

QUESTIONS PRESENTED

1. Whether the elementary school desegration plan ordered by the Court of Appeals which requires 27,000 White and Black students to be bussed to distant racially balanced schools, but permits 25,000 other students to attend neighborhood schools violates the Equal Protection Clause.

2. Whether the Court of Appeals violated Due Process and abused its discretion in ordering implementation of an elementary school desegregation plan of its own creation rather than remanding the case to the District Court to hold additional hearings and develop an acceptable plan.

---

[1] The appendix of opinions below is printed in a separate volume because it is voluminous.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Constitution of the United States, Amendment XIV, Section 1:

> ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

2. The Civil Rights Act of 1964 (Pub. Laws 88-352, Title IV, Section 401; 78 Stat. 246, 42 USCA (Chapter 21) Section 2000c which provides in pertinent part:

> "As used in this sub-chapter . . .
>
> "(b) 'Desegregation' means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin, but 'desegregation' shall not mean the assignment of students to public schools in order to overcome racial imbalance."

3. The Civil Rights Act of 1964 (Pub. Laws 88-352, Title IV, Section 407; 78 Stat. 248, 42 U.S.C.A. (Chapter 21) Section 2000c-6 (a) (2) which provides in pertinent part:

> ". . . nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any schools by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards. . . ."

STATEMENT OF FACTS

1. INTRODUCTION.

Petitioners seek review of a three-judge panel decision of the United States Court of Appeals for the Fifth Circuit reversing certain portions of an order of District Judge Ted Cabot of the Southern District of Florida entered on April 30, 1970. The order had required immediate creation of a unitary, non-racial school system in Broward County, Florida. The portions of the order reversed concerned only the composition of student bodies at some of the elementary schools.

2. PROCEEDINGS BELOW.

Petitioners, the Broward County Board of Public Instruction and the school superintendent, were the defendants in the District Court and the appellees in the Court of Appeals.

Respondents are the father of two public school students and the President of the Broward County Chapter of the National Association for the Advancement of Colored People. They were the plaintiffs in the District Court and the appellants in the Court of Appeals.

Respondents, as plaintiffs, brought a class action against petitioners, as defendants, on January 9, 1970 in the United States District Court for the Southern District of Florida. Jurisdiction vested in the court under Title 28, *U.S.C.* Section 1343 (3) and Title 42, *U.S.C.* Sections 1983 and 1985. Plaintiffs contended that defendants were maintaining a racially segregated dual school system in violation of *Brown* v. *Board of Education,* 347 U.S. 483, (1954) (Brown I) and *Brown*

v. *Board of Education,* 349 U.S. 294, (1955) (Brown II).

The first hearing occurred on January 16, 1970. The court found by its order of January 22, 1970 that the defendants were not operating a unitary integrated school system, but were operating a dual system of public schools segregated by race. Therefore, the court ordered defendants to operate thereafter a unitary school system and to file by February 16, 1970 a comprehensive plan to establish such a system.

Defendants timely filed their desegregation plan, and plaintiffs filed their objections to it.

A hearing was held on March 3, 1970 concerning the plan and objections to it. The court ordered defendants to consult and cooperate with the Florida School Desegregation Consulting Center at the University of Miami (hereinafter "Desegregation Center") "with special emphasis on eliminating the remaining all-Black elementary schools."

The Desegregation Center made its report on March 27, 1970 which stated in pertinent part at pages 9-10:

> "The survey team was not able to make specific recommendations as to the rezoning of elementary attendance areas because of insufficient data as to where pupils will reside by race in September of 1970. Furthermore, once the guiding principles for zoning are laid down, school officials are better able than others to establish proper attendance zones.
>
> "It is *recommended* that the school system be requested to submit new elementary attendance zones for the court's consideration which would eliminate as many all-black schools as possible. At the

> same time, pairings are recommended in this study for each all-black elementary school so that if rezoning of any particular school is not productive pairing can be used as an alternative method." (Emphasis in original.)

By changing attendance zones, defendants were able to desegregate all but three elementary schools. The court changed this to four all-Black elementary schools.[2]

The respondents on appeal argued that rezoning did not create a high enough racial balance in some of the elementary schools, i.e., 13 elementary schools out of a total of 83 were left with student bodies that were 90 per cent or more Black. Respondents favored the alternative pairing method suggested by the Desegregation Center. The Court of Appeals in its opinion of August 18, 1970 rejected both the pairing proposals made by the educators at the Desegregation Center and the rezoning proposals of the defendant educators incorporated by the District Court into its Final Judgment. Instead, the appellate court on its own developed a clustering method and specifically directed exactly which schools would be included in each cluster and that the District Court must assign grade levels from all the schools in a cluster to each school, e.g., all grades 1-2 would go to one school; all grades 3 to another; grades 4 to a third; and grades 5-6 to still a fourth school.

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[2] It should be noted that the Court of Appeals found that all these elementary schools were desegregated in every respect except composition of student bodies, and all secondary schools were desegregated in every respect.

3. THE BROWARD COUNTY SCHOOL SYSTEM IN 1969-70, BEFORE COURT-ORDERED DESEGREGATION.

The Broward County School System has been following an orderly process of integration since 1962. The 1965 State School Plant Survey was designed to accelerate the elimination of the dual school system. Another survey in 1967 updated the 1965 one. The all-Black Dillard branch of the Broward Junior College was eliminated in 1963. The all-Black Deerfield Park Junior High was eliminated in 1966, and integrated into the previously all-White Deerfield Junior High School. The all-Black Attucks Senior High School was phased out over a three-year period, and the students integrated into previously all-White senior high schools in the area. This was completed in 1968-69.

The 1967 School Plant Survey provided the basis for developing a five-year qualitative improvement program that runs through the 1972-73 school year. One of the program's goals is completion of the desegregation process. To finance the program, the school system proposed and the electorate approved a $108.6 million bond issue in 1968. This is three times as large as the largest school bond issue ever passed in Florida.

A detailed description of the five-year plan is contained in the Broward County Desegregation Plan proposed by the defendants on February 16, 1970. In relevant part, the five-year plan proposes construction of 45 new schools: 9 senior high schools, 8 middle schools, and 28 elementary schools. The site of each new school is being chosen in order to promote integration of student bodies. Schools which the 1967 survey found to be inferior and which cannot be brought up

to the level of other schools in the system are being phased out.

The grade alignment is being changed as follows:

High Schools	From 10-12	To 9-12
Junior High Schools	From 7-9	To Elimination
Middle Schools	From Nonexistent	To 6-8
Elementary Schools	From 1-6	To K-5

The school system at the present time is in a state of transition. New schools are being added each year while old schools are either being modernized where possible or phased out. Some schools are still on the old grade alignment, while many others have been switched to the new

During the 1969-70 school year the Broward School System included 112,024 students of which 86,523 were White and 25,501 were Black, i.e., 77% of the students were White and 23% were Black. The percentage of Black students attending schools with White students was 48.3%.

The school system has been growing at the rate of 6-8% per year, which is consistent with the extraordinary rapid growth of the county.

Growth of Student Population

	White	Black
1969-70 Total—112,024	86,523 (77%)	25,501 (23%)
1970-71 (projected) Total—118,693	92,008 (78%)	26,685 (22%)

New students = 6,669 Growth rate = 6%

In order to comply with U.S. Department of Education (HEW) Desegregation Guidelines, the completion date for transition to a fully desegregated unitary school system was advanced to September, 1971 when a major portion of the school construction program will be completed. The District Court order further advanced the deadline to June 17, 1970, which has been met.

The high schools and middle schools are fairly large, and consequently draw their students from fairly large attendance zones. Moreover, there are several all-Black neighborhoods distributed throughout the county. Together, these two facts make desegregation of the student bodies of the high schools and middle schools a not too difficult accomplishment. Indeed, the Court of Appeals did not object to the District Court's plan in this respect.

On the other hand, the elementary schools are based on the premise that every neighborhood should have its own elementary school. During the past school year, 1969-70, there were 84 elementary schools as compared to 20 middle schools and 11 high schools. Thus the elementary schools are fairly small and draw their students from fairly small attendance zones.

4. THE DISTRICT COURT'S DESEGREGATION PLAN.

The plan for a unitary school system, which the District Court ordered the defendants to put into operation, took into consideration the six areas listed in *Green* v. *County School Board of New Kent County,* 391 U.S. 430, (1968),

1. Faculty and 2. Staff.

a. Elementary Schools.

During the 1969-70 school year the Broward School System employed 2,374 elementary school teachers of which 1,821 were White and 553 were Black, i.e., 77% of the elementary school teachers were White and 23% were Black. During the current 1970-1971 school year plans call for 2,276 elementary school teachers of which 1,691 will be White and 585 will be Black, i.e. 75% White and 25% Black. The unitary school system plan requires that each of the 83 elementary schools have a faculty composed of 75% White teachers and 25% Black teachers. See Court Order Addendum No. 4 to Broward County Desegregation Plan.

b. Middle Schools and Junior Highs.

During the 1969-70 school year the Broward School System employed 1,248 teachers in the middle schools or junior highs of which 1,067 were White and 181 were Black, i.e., 15% of these teachers were Black. During the current 1970-71 school year plans call for 1,246 middle school or junior high teachers of which 996 will be White and 250 will be Black, i.e., 80% will be White and 20% will be Black. The unitary school system plan requires that each of the 20 middle schools or junior highs have a faculty composed of 80% White teachers and 20% Black teachers. See Court Order Addendum No. 4 to Broward County Desegregation Plan.

c. High Schools.

During the 1969-70 school year the Broward School System employed 1,262 high school teachers of which 1,071 were White and 191 were Black, i.e., 15% of the high school teachers were Black. During the current

1970-71 school year plans call for 1,620 high school teachers of which 1,295 will be White and 325 will be Black, i.e., 80% will be White and 20% will be Black. The unitary school system plan requires that each of the 12 high schools have a faculty composed of 80% White teachers and 20% Black teachers. See Court Order Addendum No. 4 to Broward County Desegregation Plan.

The plan requires that administrators will be assigned to elementary schools without regard to race, and at least one Black administrator and one Black counselor will be assigned to each secondary school. It further provides:

> "Broward County will institute an aggressive program of recruiting and training Black administrators for the central office staff."

3. Transportation.

Bus routes and the assignment of students to buses have been designed to insure the transportation of all eligible students (under Florida law, all students living more than two miles from their assigned school) on a non-segregated and otherwise non-discriminatory basis. See Court Order Addendum No. 8 to Broward County Desegregation Plan.

4. Extracurricular Activities.

Integration of the extracurricular athletic activities began during the 1961-62 school year and was completed during the 1966-67 school year. This included integration of the coaching staffs as well. Integration of all other extracurricular activities was also completed before filing of the instant case. Thus it was not necessary to formulate a plan for desegregation of

extracurricular activities since desegregation had already occurred several years ago. See Court Order Addendum No. 9 to the Broward County Desegregation Plan.

5. Facilities.

With desegregation of faculty, staff and student bodies, all facilities have also been desegregated with regard to race or color.

6. Composition of Student Bodies.

The district judge summarized the results under this heading as follows:

> "In the plan heretofore outlined under 'A Unitary System' there will be 3,277 Black students, in four elementary schools, attending segregated schools, out of 26,685 Black students in the whole system. This constitutes 12.3% of the Black students attending segregated schools and 87.7% attending desegregated schools. There are seven other elementary schools where the student bodies are 92% or more Black. Although student bodies composed of 8% or less Whites may be minimal desegregation, it is consistent with the desegregation achieved under the equidistant formula which was approved on February 17, 1970, by the Fifth Circuit in *Ellis* v. *Orange County, supra,* (423 F.2d 203, 5th Cir., 1970) (See Appendix II of *Ellis,*) and appears no less acceptable when achieved through the plan here used. It is not the plan but the results that count.
>
> * * * * *
>
> "The majority to minority transfer provision and review by the Bi-racial Committee in the areas of school site selection, pupil transfer, and transportation are designed to assure further desegregation in the future."

5. THE COURT OF APPEALS' DESEGREGATION PLAN.

The plan ordered implemented by the Court of Appeals concerns only the racial composition of the student bodies at 40 of the 83 elementary schools in the Broward School System. The plan results in racially balancing these 40 schools, that is, except in two instances, Blacks are reduced to a minority status. Thus the 13 elementary schools under the District Court's plan at which Blacks constituted 90 per cent or more of the student body are eliminated.

The appellate court grouped these 40 schools into three clusters of four schools (a total of twelve schools), eight clusters of three schools each (a total of twenty-four schools), and two pairs of two schools each (a total of four schools).

The District Court's plan had provided:

> "Any pupil, with parental consent, shall have the right to transfer from a school at which his race is in the majority to the next nearest school at which his race is in the minority and the board shall furnish free transportation provided the distance involved meets state transportation statutes."

The appellate court ordered this ruling modified to provide that "(1) any pupil shall have the right to transfer from a school at which his race is in the majority to *any* school (not just the next nearest school) at which his race is in the minority and (2) transferees shall be given priority for space." (Emphasis by the Court of Appeals.)

6. IMPLEMENTATION OF THE COURT OF APPEALS' PLAN.

The District Court by order dated August 28, 1970 ordered Broward County schools to open on schedule on August 31, 1970 and to follow the original desegre-

gation plan of April 30, 1970. By the same order, the District Court made the grade assignments to the clustered elementary schools, the only area of discretion permitted it by the Court of Appeals' decision of August 18, 1970.

Although the school superintendent requested until February 1, 1971 in which to complete implementation of the Court of Appeals' desegregation plan, the District Court by order of September 4, 1970 ordered complete implementation no later than November 15, 1970. By that date the school system may be able to obtain the 57 additional buses needed to bus the 11,671 additional students which will be entitled to busing under state law [3] as the appellate court's plan is implemented.

REASONS FOR GRANTING THE WRIT

INTRODUCTION.

This case merits review on certiorari because it involves important legal questions about implementing *Brown I,* 347 U.S. 483, (1954) and *Brown II,* 349 U.S. 294 (1955), and because it will have important practical consequences regarding elementary school desegregation.

The petitioners, the Board of Public Instruction of Broward County, Florida, and the School Superintendent, recognize their affirmative responsibility to provide a desegregated, unitary and non-racial school system now in compliance with the decisions of this Court. We realize that school boards "may no longer operate

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[3] *Florida Statutes* Ch. 234 requires that the school system provide transportation to students living more than two miles from their assigned schools.

a dual school system based on race or color", but must "begin immediately to operate as unitary school systems within which no person is to be effectively excluded from any school because of race or color". *Alexander* v. *Holmes County Board of Education,* 396 U.S. 19, (1969).

Indeed, the good faith of the Broward School Board has never been questioned. The Court of Appeals itself in the instant case observed at footnote 3 of its opinion that the School Board on its own initiative had gone beyond even the detailed requirements of *Singleton* v. *Jackson Municipal Separate School District,* 5 Cir. 1970, 419 F.2d 1211 (*en banc*), *rev'd, in part sub nom. Carter* v. *West Feliciana Parish School Board,* 1970, 396 U.S. 290, 90 S. Ct. 608, 24 L. Ed. 2d 477 (*per curiam*) (reversal limited to the issue of *timing* of student desegregation), in developing a desegregation plan that would actually work. The appellate court commented:

> "[3] The court's order also noted that the school board, apparently on its own initiative, had made plans to conduct an extensive orientation program to prepare faculty and staff for the advent of desegregation. We are inclined to agree with the Board that 'although *Singleton* did not require such an orientation program, obviously one is necessary if the unitary school system plan is going to work.' Brief of Appellees at 9."

As the Court of Appeals stated at page 6 of its decision, "The real bone of contention in this case is student assignment at the elementary school level."

Although the appellate court rejected the elementary school assignments of the District Court plan based on rezoning, surprisingly, it also largely rejected the

pairing proposals of the Desegregation Center at the University of Miami, which were suggested as an alternative method in case rezoning did not work. Rather than remanding the case with order to implement at once the Desegregation Center's plan pending development of an educationally sound and constitutionally acceptable plan by the local educators, the appellate court acted as both judges and educators in developing a desegregation plan of its own for the elementary schools.

In Part I, *infra,* petitioners submit that the appellate court's elementary school desegregation plan violates the Equal Protection Clause of the United States Constitution.

In Part II, *infra,* petitioners submit that the appellate court violated due process and abused its discretion in devising a desegregation plan of its own rather than remanding the case with directions to develop an acceptable plan.

I.

The Court of Appeals' Elementary School Desegregation Plan Violates the Equal Protection Clause in That It Creates a Dual School System Which Sends 27,000 Students to Up to Four Different Schools, Each of Which Contains Not More Than Two Grade Levels, During the Six Elementary Years; and, Which Permits 25,000 Other Students to Attend Neighborhood Schools Containing All Six Grade Levels and Offering the Rich Variety of Programs That Only a Complete School Can Provide.

The Court of Appeals found that Broward County under the District Court's plan had four all-Black elementaries and nine elementaries that were 90 per cent or more all-Black out of a total of 83 elementaries.

The appellate court grouped 40 of the schools into clusters in order to eliminate the all-Black or pre-

dominantly Black schools. This grouping affects 27,000 of the total 52,000 elementary school children. Most of the schools and students affected live in the central, older parts of Broward County. As the court noted at pages 10-11 of its decision, the Black population is concentrated in this core area.

In Broward County, as in many other urban counties in America, the upper-income White families live in a suburban belt around the central area. These families supply most of the 25,000 elementary students who are unaffected by desegregation orders because they live far away from Black neighborhoods. They will continue to attend all-White or predominantly White neighborhood elementary schools.

In contrast, the plight of families living in the central area is well summarized by a Mrs. Gladys Mae Schmelz in a recent letter to the editor of the *Fort Lauderdale News* appearing on September 7, 1970:

> "I have eight children, six are in school and will be attending (if I send them) five different schools. Is this freedom?"

These "people problems" are explained in a report by the newly-appointed school superintendent, Dr. Benjamin C. Willis, as follows:

> "People Problems
>
> "Reorientation program for the community, parents, teachers to gain reacceptance and renewed cooperation in implementing the plan.
>
> "Family adjustment to children in as many as three elementary schools with a variation in opening and closing times for each. The family read-

justs to the loss of the services of the older children in supervising the younger ones in going to and from school, only to find that they must now belong to three P.T.A.'s.

"Program variation between paired schools minimizes the effectiveness of family involvement in assisting each other with school work.

"Many teachers will require additional inservice training in order to utilize effectively the new instructional environment into what they have been reassigned. This disruptive effect on the teachers will carry over to their interaction with students.

"Already successfully integrated situations are destroyed, and may never be rebuilt, and and the new ones required take at least as long to build as the old ones did." (63a)

The most disconcerting of the people problems concerns busing. The busing situation is summarized by the District Court's order of September 4, 1970:

"The system now transports 33,000 students with 102 busses of 75-student capacity each on regular routes, and 30 busses of 60-student capacity and with special lifts and equipment for the transportation of physically and mentally handicapped children. These special busses also carry regular students in order to make maximum use of capacity. There are 20 spare busses of the regular model and two spares of the special model. These spares are used to substitute for busses undergoing maintenance and for emergency runs when busses are broken down. The busses each make five round trips per day, the opening and closing times of the various schools being staggered in order to make this maximum utilization of the busses possible. This year the drivers begin leaving on their routes at 5:00 and 5:30 A.M. and the last of them return

> at 6:00 and 6:30 P.M., the drivers averaging eight and one-half to nine hours per day on the road.
>
> * * * * *
>
> "The additional students to be transported under the Fifth Circuit Court plan will be 11,671, requiring 57 new busses, each to be used on three round trips per day. All of these students meet the two mile statutory requirement, although there are many students residing less than two miles from their schools who should be bussed because of the safety factors."

The question of the constitutionality of such a massive busing program in order to completely eliminate every school with an all-Black or predominantly Black student composition is raised in *Swann* v. *Charlotte-Mecklenburg Board of Education* and the companion cases in which this Court has granted certiorari and scheduled oral argument for October 12, 1970. The legal problem of busing to achieve racial balance in that case and the instant one are the same. If the Court grants certiorari in the instant case, we shall present argument on that point.

However, the instant case presents the very serious additional constitutional question of whether the 27,000 Black and White elementary students who are going to be subjected to the trauma of having their elementary education split up among three or four schools are being denied equal protection of the laws when the other children in the outlying areas are permitted to enjoy normal educational experiences in neighborhood schools.

The decision of the Court of Appeals, while abolishing one dual elementary school system based upon racial groups, has effectively created a new dual school system based upon economic groups. Broward County

unquestionably has two types of elementary schools. One type is a neighborhood school, all-White or predominantly White, and contains grades kindergarten-fifth with a full-range of extracurricular activities and programs. The other type is located several miles from the student's home and most students have to be bussed to it; Whites are in the majority, but there are many Black students; it contains only one or possibly two grades with the resulting limited activity programs.

There are 43 elementary schools and 25,000 students in the first type of school. They are located in the heart of all-White, high-income neighborhoods. There are 40 elementary schools and 27,000 students in the second type. They are located within at least a few miles of a White or Black neighborhood.

This Court in *Brown* I in speaking of the harm done Black children by segregated schooling explained at 347 U.S. 494:

> "To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."

One wonders how the dual school system created by the Court of Appeals will affect the hearts and minds of the 27,000 little children in Broward County, ages five to twelve, one-sixth of whom are attending school for the first time in their young lives.

The doctrine of separate but equal, once buried by this Court in *Brown* I, now comes back from the dead. Petitioners are in a quandary how they should treat this new group of schools created by the appellate court. The 40 and the 43 are obviously separate types

of schools. They are equal as far as the traditional notions of "readin', writin', and 'rithmetic" go, but those ideas are as outmoded in modern elementary education as *Plessy* v. *Ferguson,* 163 U.S. 537, (1896), is in the law.

Now elementary schools are involved in art, music, drama, dancing, foreign languages, assembly programs, carnivals, athletics—an almost endless variety of activities. There are also many special programs to meet the special problems of the students—from remedial reading to speech therapy. In these areas the 40 clustered schools must inevitably suffer. The vast richness of the modern elementary school is dependent upon having a multi-graded curriculum and a diversified student body of several age groups. There just cannot be, for example, the leadership training experience of participation in safety patrol when the school contains only first graders, and a school composed only of fifth and sixth graders does not need a safety patrol.

In sum, these 27,000 Black and White elementary school children will receive their elementary education in up to four different schools, located far from their homes, which will be decidedly inferior in the richness and variety of their programs as compared to the 43 schools which the other 25,000 children will attend.

II.

The Court of Appeals Violated Due Process and Abused Its Discretion in Ordering Implementation of an Elementary School Desegregation Plan of Its Own Creation Without Benefit of a Record Supplying the Necessary Information.

The district judge in this case faced an acutely difficult problem in devising a constitutionally acceptable unitary school system for Broward County. Brow-

ard County is located on the lower southeast coast of Florida, known as the "Gold Coast". It includes the City of Fort Lauderdale, and is largely an urban county.

The school system currently includes 116 schools and approximately 120,000 students. To completely desegregate this large school system would be difficult enough. However, the problem is compounded because much of the school system lies in the future. Broward County is either the fastest growing county in America or one of the fastest growing. This causes a tremendous increase in growth of student population which has been averaging about eight per cent per year. For example, there are 8,000 more students this year than last year.

To provide school buildings for these new students the electorate approved a $108.6 million bond issue in 1968. A total of 45 new schools will be added by the 1972-73 school year.

Nor is the school board just building new schools. It has completely revised the educational program for all students. The curriculum is expanding to include kindergartens. Junior highs are being phased out, and middle schools are being phased in. These sweeping changes are reflected by the changes in grade alignments as follows:

High Schools	From 10-12	To 9-12
Junior High Schools	From 7-9	To Elimination
Middle Schools	From Nonexistent	To 6-8
Elementary Schools	From 1-6	To K-5

The plan devised by the judges of the Court of Appeals sitting as educators completely neglects these educational factors. This is readily understandable because the record before the court was devoid of a consideration of educational objectives.

The district judge never attempted to act as an educator. After suit was filed on January 9, 1970 and he determined on January 22nd that Broward County did not have a unitary school system, his only concern was to get one into operation as soon as possible. Questioning the constitutionality of the Board's desegregation plan filed February 16, 1970 because of the number of all-Black elementary schools contained in it, he referred the plan to the Desegregation Center at the University of Miami.

The Desegregation Center is one of many such centers established at universities across the South and supported by federal grants in order to assist local school boards in developing acceptable desegregation plans.

The Center reviewed the Board's plan between March 3, 1970 and March 27, 1970. The Board incorporated many of the Center's recommendations into its revised plan of April 13, 1970. The district judge reviewed the Center's recommendations, the Board's revised plan, and the suggestions of the plaintiffs as well as those of a number of intervenors. The Final Order of April 30, 1970 is based on the revised plan with some slight modifications of it.

Strangely, the Court of Appeals in rejecting the District Court's plan with respect to some student assignments to elementary schools, completely disregarded the proposals of the educators at the Desegre-

gation Center which, like the appellate court's own plan, achieved racially balanced elementary schools through massive busing, but at least tried also to conform to the new educational program of the Board. In this regard, the Court of Appeals grossly abused its discretion and violated every concept of due process.

The district judge explained the educational problems created by the appellate court's order as follows in his order of September 4, 1970:

> "Most of the implementation of the Fifth Circuit Court plan may be made on an emergency basis within the thirty days time suggested by plaintiffs, although, of course, the orderly preparation for the education of the children in such areas as adjustment of curriculum and in-service teacher training cannot be carried out within that time. Particularly distressing, for example, is the situation that arises in the grouping of schools in which one is presently used predominantly for children of migrant laborers under a special federal grant, where the teachers have been specially trained, and curriculum devised to supply deficiencies in culturally deprived children, many of whom are slow learners; where the second school in the group was built without classroom partitions under the new 'open school' concept, coupled with team teaching and specially trained teachers and substantial obliteration of grade levels as applied to the teaching materials and curriculum so the child may progress in accordance with his capacity and inclination; and where a third school, of older vintage, uses the traditional grade levels and concepts. There does not appear to be sufficient discretion left to this court under the Fifth Circuit Court order to make allowances for these educational differences." (100a)

School officials testified at a hearing on September 2, 1970 that they could well lose their federal grant to

continue the program for children of migratory workers now located at Markham Elementary School. Markham was clustered with Palmview and Tedder, and the Markham students are disbursed among the three schools. Obviously it will now be impossible to single out the children of migratory workers for special remedial education since they are blended in with the Black and White children who have always had stable educational experiences. The migrant children will once again become the forgotten children.

Petitioners do not mean to imply that the distinguished judges of the Fifth Circuit who decided the instant case are intentionally cruel or heartless. When they included Markham in the cluster, they simply did not know that it was a special school financed by a federal grant to help children of migrant workers because there was nothing in the record describing the special characteristics and programs of each school.

Significantly, the educators at the Desegregation Center did not include Markham in their pairing proposals to achieve racially balanced elementary schools.

This Court stated in *Green* v. *County School Board of New Kent County,* 391 U.S. 430 at page 442 that school boards must

> "fashion steps which promise realistically to convert promptly to a system without a 'white' school and a 'Negro' school, but just schools."

The appellate court followed that admonition in the instant case with a commendable devotion. The trouble is that the concept of "just schools" has no place in education. School boards are attempting to develop schools as individualized and varied as their students. Markham is, or was, such an example.

The Court of Appeals treated each of the 83 elementary schools as identical and interchangeable. Some are, some are not. The Markham blunder by the court repeats itself. The teachers and administrators of Broward County feel like doctors during an epidemic who find that someone has smashed their equipment for treating their patients. Broward County is experiencing an epidemic of new students from all over the country with all kinds of educational problems. It has the trained personnel and special schools to deal with the needs of slow learners, fast learners, physically handicapped children, children of migrant workers, etc.

The appellate court's decision, without any record to guide it in this area, simply lumps together 40 schools in the central area into various clusters, and turns each school, no matter what its special characteristics may be, into a school embracing not more than two grade levels.

From the legal point of view, the court's proceeding to arbitrarily make student assignments without the guidance of a supporting record is a manifest abuse of discretion. However, from the educational point of view, the court's decision is a disaster overwhelming to the Broward educators who have worked so hard to raise the school system from the depths of the teacher strike of several years ago by developing the five-year qualitative improvement program, rallying voter support for the $108.6 million bond issue, and getting the new schools designed and built so that they could be adaptable to the needs of the students.

In striking contrast, the educators at the Desegregation Center tried to harmonize the goal of racial balance

with the educational goals of Broward officials. The school board, as indicated *supra,* is in the midst of a five-year program that will divide the system into elementary schools, middle schools, and high schools.

The Center's proposals affect only 23 elementary schools; the court's plan affects 40. The Center suggests that one school be phased out, sixteen be paired, and the remaining six be grouped into two groups of three schools. The court's plan divides 40 schools into three groups of four schools, eight groups of three schools, and two groups of two schools. The Center's proposals require busing of an additional 3,260 elementary students. The court's plan requires busing of an additional 11,671 elementary students.

The Center's proposals attempted to divide the elementary schools affected into two groups: "elementary" schools of kindergarten through second grade and "intermediate" schools of third-fifth grades. Sixth grades would begin middle school. These proposals would permit the board to continue its "open school" concept of obliterating grade levels and allowing students to progress at their own learning speed. The board could continue to experiment with the use of teaching teams and new teaching materials.

On the other hand, the court's plan by grouping schools in clusters of three or four schools means that each school cannot possibly have more than two grades and many will have only one. This effectively forecloses the type of experimentation in teaching methods which the Broward educators have been conducting in recent years and which the Desegregation Center educators tried to preserve.

Moreover, under the Center's plan, instead of a student attending only three schools in his thirteen-year

educational experience, the students in the affected schools would attend four. Under the court's plan this would increase to five or six. No one knows what these disruptions coming in the early years of formal education will have upon the children's lives.

Comparison to the Finger plan ordered by the district judge in *Swann* v. *Charlotte-Mecklenburg Board of Education,* now on certiorari before this Court, is illuminating. First of all, the district judge, rather than developing a plan on his own as the Court of Appeals did in the instant case, called in an educational consultant, Dr. Finger, to meet with the school system's administrators and to develop a desegregation plan.

The Finger plan involves busing only 9,300 elementary students. The schools are paired with grades one through four attending one school and grades five and six in the other. How much more rational this plan seems than the one ordered by the Fifth Circuit in the instant case which buses elementary children to a different school every year or at least every other year. Yet the Fourth Circuit found the Finger plan unreasonable and rejected it!

Nevertheless, petitioners do not intend any endorsement of the Desegregation Center's proposals. We believe that the pairings suggested by the Center in the instant case are educationally unsound, and therefore they should not be implemented. We do not know enough about the Finger plan to comment on it except what we have said *supra.*

However, this dispute between petitioners and the Desegregation Center is essentially a dispute between educators over educational issues. All agree upon the necessity of a unitary, non-racial school system in

Broward County now. Many differences arose between these same two groups of educators over desegregation of the high schools and middle schools. But these differences were resolved and plans have been implemented which meet with the approval of the Court of Appeals. If this Court rules in *Swann* and its companion cases that racial balancing is to be the test, then there is no reason to believe that the petitioners, the Desegregation Center, the respondents, and the district judge cannot develop at once a satisfactory racial balancing plan for the elementary schools that will also be educationally sound just as they have already done for the high schools and middle schools.

This Court wisely observed in *Brown II,* 349 U.S. 294 at 299:

> "Full implementation of these constitutional principles may require solution of varied local school problems. School authorities have the primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles. Because of their proximity to local conditions and the possible need for further hearings, the courts which originally heard these cases can best perform this judicial appraisal. Accordingly, we believe it appropriate to remand the cases to those courts."

III.

Summary.

This case, like *Swann* and its companion cases, raises the great questions of whether, as a constitutional matter, any particular racial balance must be achieved in the schools; to what extent school districts and zones

may or must be altered as a constitutional matter; to what extent transportation may or must be provided to achieve the ends sought by prior holdings of the Court.

However, even if the Court resolves these questions adversely to the Charlotte-Mecklenburg Board of Education, it will not dispose of the instant case which also raises questions of equal protection of the laws and due process.

The Court of Appeals in the instant case has created a new dual school system that subjects 27,000 elementary school students to a distorted and inferior education. It has abrogated to itself, albeit inadvertently because it has acted without the guidance of a record, final decision-making power over basic curriculum and educational programs at the 40 schools affected by its order.

Time and again this Court has acted to right the wrong done to a single individual. For the 27,000 little children involved, children of migrant workers, Black children, White children, this petition for a writ of certiorari is the end of the line. No one knows how the lower court's order creating a new dual school system and stripping local educators of the ability to experiment and develop new educational programs will affect the hearts and minds of the children involved.

CONCLUSION.

For the foregoing reasons it is respectfully submitted that the petition for certiorari should be granted to review the judgment of the United States Court of Appeals for the Fifth Circuit.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

NOS. 749, 891

THE BOARD OF PUBLIC INSTRUCTION OF BROWARD COUNTY, FLORIDA, *et al.*,

Petitioners,

v.

FREDERICK ALLEN, *et al.*

BLANCHE ELY PARENT TEACHERS ASSOCIATION, *et al.*,

Petitioners,

v.

THE BOARD OF PUBLIC INSTRUCTION OF BROWARD COUNTY, FLORIDA, *et al.*

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION TO CERTIORARI

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TABLE OF CONTENTS

PAGE

Opinions Below 1

Jurisdiction 2

Questions Presented 2

Constitutional Provisions and Statutes Involved 2

Statement 3

ARGUMENT 9

CONCLUSION 14

TABLE OF AUTHORITIES

Cases:

Alexander v. Holmes County Board of Education, 396 U.S. 19 (1969) 11

Bolling v. Sharpe, 347 U.S. 497 (1954) 10

Brown v. Board of Education, 347 U.S. 483 (1954).....2, 10

Carter v. West Feliciana Parish School Board, 326 U.S. 290 (1970) 11

Davis v. Board of School Commissioners of Mobile County, No. 436, O.T. 1970 12

Green v. County School Board, 391 U.S. 430 (1968)....2, 10

PAGE

Haney v. County Board of Education of Sevier County, 429 F.2d 364 (4th Cir., 1970) 13

McGowan v. Maryland, 366 U.S. 420 (1961) 10
McLaughlin v. Florida, 379 U.S. 184 (1964) 10

Swann v. Charlotte-Mecklenburg Board of Education, Nos. 281 and 349, O.T. 1970 12

Statutes:

28 U.S.C. 1254(1) 2

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Opinions Below

The opinion of the Court of Appeals (Pet. App. A 32a-46a) is now reported at 432 F.2d 369 (5th Cir. 1970). The decision of the district court is unreported.

Jurisdiction

The decision of the Court of Appeals was entered on August 18, 1970. The petition for certiorari in No. 749 was filed on September 23, 1970. The petition for certiorari in No. 891 was filed on October 23, 1970. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

Questions Presented

No. 749

Whether the court of appeals was correct in ruling that a desegregation plan which left thirteen elementary schools all-black or virtually all-black, enrolling 68% of all-black elementary students in the system, failed to meet the desegregation requirements of *Brown* v. *Board of Education*, 347 U.S. 483 (1954) and *Green* v. *County School Board*, 391 U.S. 430 (1968) where the court found that it was feasible to desegregate totally all the virtually all-black schools by pairing and clustering those schools with nearby predominantly white schools.

No. 891

Whether the courts below were correct in approving the closing of a formerly all-black high school by the school board where there was ample evidence of the physical inferiority of the facility and no alternatives were presented to the trial court by which the school could be desegregated.

Constitutional Provisions and Statutes Involved

Pertinent excerpts from the Fourteenth Amendment to the Constitution of the United States and the Civil Rights Act of 1964 are set forth at page 5 of the petition in No. 749 and at pages 3-4 of the petition in No. 891.

Statement

No. 749

This school desegregation case was commenced on January 9, 1970 seeking injunctive relief against the continued operation of a dual, racially segregated school system in Broward County, Florida, a system which includes the city of Fort Lauderdale. At the time suit was brought there were seventeen all-black schools operating in Broward County (13 elementaries, 2 middle schools, and 2 high schools). Approximately 90.4% of the black elementary school pupils attended schools which were at least 90% black; 56.9% of the middle school black students attended schools over 99% black; and 65.5 percent of the senior high school black students attended all-black schools.

After hearings in the matter, the district court found that the board (petitioners here) was operating a dual school system in violation of the Constitution and ordered it to prepare a desegregation plan that would establish a unitary school system in Broward County. The first plan submitted by the board contained provisions for desegregating only the two all-black high schools. After a hearing was held on that plan, the board was ordered to consult with the Florida School Desegregation Consulting Center (H.E.W.), specifically with respect to desegregating the remaining all-black schools, and H.E.W. was requested to file with the court its own proposals for desegregation. The geographic zoning plan subsequently submitted by the board left ten elementary schools all-black or virtually all-black, enrolling 71% of the black elementary school population of Broward County. In contrast, the plan which H.E.W. submitted left no school all-black and reduced the percentage of black elementary students in predominantly black schools to 14%. This result was

accomplished by pairing the all-black or virtually all-black elementary schools with nearly predominantly white schools. In recommending the pairing technique, the H.E.W. report stated:

> The absence of any large concentration of black population areas in Broward County makes the effective desegregation of elementary schools a distinct possibility. In the opinion of the survey team either the rezoning or pairing of elementary attendance areas can desegregate all of the remaining all-black elementary schools with a minimum of additional busing, most of which would involve distances of less than 4 miles.
>
> Rezoning may be preferred by the Broward system to pairing, but rezoning as a technique is not always feasible. In the opinion of the survey team no educational disadvantage accrues to elementary pupils in paired schools nor are paired elementary schools any more difficult to administrate.

In its final order, the district court rejected the H.E.W. recommendation on pairing and ordered implemented a modified version of the geographic zoning proposed by the board. The result of the court-ordered plan was to leave four elementary schools 100% black, and nine others with black enrollments between 90% and 99%. Sixty-three percent of the total black elementary enrollment would attend these 13 schools. In its order, the district court stated as follows with respect to other techniques for desegregating the remaining black elementaries:

> The only alternatives to leaving these schools segregated are (1) transport or "walk-in" students from noncontiguous or distant areas; or (2) "pairing" an all-white school with an all-Black school, that is, by combining the attendance areas of the "paired" schools and

> sending all students in certain grades to one of the schools and all students in the other grades to the other school. In some insances "grouping" of three or more schools is resorted to, rather than "pairing".
>
> It is difficult to justify the removal of young students to distant areas for the sole purpose of integrating a school. "Pairing" or "grouping" of schools also involves the same elements of additional transportation or "walking in." The same principles apply to attempts to integrate more blacks into predominantly White schools. The time, inconvenience, and expense involved, as well as the safety factor, are all relevant to the resolution of the problem. (Petition App. 16a).

On appeal of the lower court's decision, the 5th Circuit reversed that part dealing with desegregation of elementary schools. On this matter the court below held:

> Our examination of the record before us indicates that the pairing/clustering technique can be utilized to desegregate *every one* (Emphasis in the original) of the 13 all-black or virtually all-black elementary schools envisioned in the plan approved by the district court. This desegregation can be accomplished "without creating impractical attendance zones or inordinate transportation problems." (Petition App. 40a).

The court of appeals' order directed the district court to implement specific pairing and clusterings of schools in two of the three attendance areas in Broward County. In the third area, the court suggested six alternative pairings and groupings from which the district court could select the one alternative it regarded as most feasible. (Petition App. 40a-43a). The district court was directed to deter-

mine the arrangement of grade structures in all the combined schools[1] and was permitted to order alterations and adjustments in its discretion to the extent that such changes would not diminish the degree of desegregation projected by the court of appeals' decision. Concluding its order, the court of appeals indicated:

> It is axiomatic, of course, that the school board and the district court are under a continuing duty to appraise the school system in light of the actual conditions and experience and, within limits we have just indicated, to make whatever changes are necessary, now and in the future, to assure the continued maintenance of a unitary system. (Petition App. 44a).

Upon remand, after hearing arguments from both parties and receiving recommendations from the board, the district court on August 28, 1970, ordered implemented the pairing and clusterings in the two school attendance areas specifically required by the court of appeals, selected the plan it regarded as most feasible for the third attendance area out of the six recommended by the appellate court, and designated how grades would be assigned among the paired and grouped schools. Subsequently, on September 4, 1970, the district court postponed until November 15, 1970 full implementation of the court of appeals order requiring pairing and clustering. Until that date, the board was permitted to operate according to the desegregation plan originally ordered by the district court which had been reversed on appeal. Several petitions of the board to the Fifth Circuit for rehearing, rehearing *en banc*, a stay order

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[1] The court of appeals recommended that grades in the combined school not be "split", i.e., assigning a particular grade to more than one school in the group, but allowed "splitting" where the degree of desegregation in any attendance zone was not diminished. (Petition App. 43a).

and recall of the mandate were denied by the court of appeals. However, on November 2, 1970, that court stayed the order of the district court of September 4, 1970 "until further orders of this court" and took the board's most recent supplemental petition under advisement. As a consequence, the Broward County school system continues to operate in accordance with the original geographic zoning plan approved by the district court rather than with that involving pairings and clusterings required by the Fifth Circuit.

No. 891

The first hearing in the district court on the complaint seeking desegregation of the dual school system in Broward County was held in January 16, 1970. One month later, on February 16, 1970, the board (petitioners in No. 479, respondents in No. 891) submitted a proposed plan of desegregation to the district court which contained, among other provisions, a statement of the intention to close ("phase-out") the Blanche Ely High School, located in Pompano Beach, Florida. A hearing on the board's plan was held on March 3, 1970 at which time an attorney indicated to the court that he represented the Blanche Ely Parent Teachers Association (petitioners here), a group that opposed the closing of Ely High School, and intended to seek intervention in the desegregation litigation to protect that group's interests. No appearance of counsel nor petition for leave to intervene was filed on behalf of Blanche Ely Parents between March 3 and April 3, 1970. Final hearing in this matter was held in the lower court on April 3, 1970. At that hearing, a second attorney appeared, stated that he represented the Blanche Ely Parent Teachers Association and requested leave of the court to intervene. Leave was granted on April 7, 1970. On April 13, 1970 the second attorney filed his notice of appearance and a petition for leave to inter-

vene. In support of its opposition to the closing of Blanche Ely High School, the Parent Teachers Association appended to its petition documents indicating that Ely was a duly accredited facility, resolutions from community groups in Pompano Beach and telegrams from citizens opposing the closing of Ely. In its final order of April 30, 1970, the district court approved the board's plan to close Ely finding "that it [Ely] was not a reasonably good high school facility, being deficient in every area, excepting physical education." [Petition App. 14a, No. 749]. In addition to having the board's recommendations on Ely, the district court also had before it findings of an expert in educational facilities and specifications hired by H.E.W. which concluded that Ely was an inferior high school plant. In accordance with the board's request, the district court ordered the Ely facility used in 1970-71 to house students from an all-black elementary school that was being closed. On May 11, 1970, the Ely Parent Teachers Association moved for "a new trial and a full trial." The district court denied that motion on June 4, 1970, reiterating its grounds for allowing Ely to be closed (reports of independent experts as to its inadequacy) and its reasons for rejecting the arguments of the Ely Parent Teachers Association (inconclusiveness of accreditation ratings and lack of probative value of the resolutions and telegrams).

The Ely Parent Teachers Association filed a cross-appeal, after plaintiffs appealed seeking review of the lower court's order respecting desegregation of the 13 all-black elementary schools in Broward County. As cross-appellant, it sought reversal of the decision to close Ely High School and argued, along with plaintiffs, that the over-all plan approved by the district court was constitutionally inadequate. In support of its position, the Parent Teachers Association submitted two documents, a certificate of accreditation given

Ely by the Southern Association of Colleges and Schools and an evaluation done of Ely by the same Association in April, 1967. The court of appeals affirmed the closing of Ely stating:

> We are not persuaded that we should order the district court to require the reopening of Blanche Ely as a high school. There is nothing in the record to indicate that the Board's decision to close Blanche Ely was based on anything other than sound educational criteria. Moreover, the record amply supports the district court's finding that the Blanche Ely facility is not an adequate physical facility for conducting a high school program. In the light of these factors, we find no merit in the intervenors' objection to the closing of the school. (Petitioners App. 36a-37a, No. 749).

ARGUMENT

I.

The two issues raised by the board's petition are controlled by previous decisions of ths Court. There are no other issues presented to warrant granting a writ of certiorari. The board's first argument contends that the order of the court of appeals which requires the pairing and grouping of some, but not all, schools in Broward County to desegregate the dual system works a denial of equal protection upon those students attending the paired and grouped schools. The concept of equal protection, embodied in both the 5th and Fourteenth Amendments, forbids state or federal government to establish arbitrary, irrational distinctions among classes of persons. If distinctions are made by a governmental entity which works a hardship upon one or more classes as compared to others, such distinctions

must be justified in terms of being reasonably related to a legitimate governmental purpose. *McGowan* v. *Maryland,* 366 U.S. 420 (1961); *McLaughlin* v. *Florida,* 379 U.S. 184 (1964); *Bolling* v. *Sharpe,* 347 U.S. 497 (1954).

With respect to the problem of segregated public education, this Court, since *Brown* v. *Board of Education,* 347 U.S. 483 (1954), has put states and all courts, state and federal, on notice that dual school systems of black and white schools must be dismantled "root and branch" and unitary, non-racial systems established in order to comply with the Constitution. In *Green* v. *County School Board,* 391 U.S. 430 (1968) this Court required school boards to present, and federal courts to demand, desegregation plans which offered meaningful prospects of achieving immediate and complete disestablishment of dual school systems. What the board challenges in this case is the fact that the court below fulfilled its responsibility under *Brown, supra* to desegregate totally the school system in Broward County. The simple answer is that whatever distinctions were made by the court between classes of school children were justified because they were intimately related to a legitimate constitutional purpose, — desegregation of the school system. Some schools were involved in the desegregation process more than others because of their proximity to schools of heavy black concentration. Nothing in the Fourteenth Amendment warrants denominating this desegregation process as a denial of equal protection. And in any event, if petitioners' analysis were adopted, it could be argued that school boards have traditionally discriminated against various classes of school children by assigning some, but not all, to K-6 schools, some to K-3 schools, some to new schools, some to old schools, some to schools with specialized teaching staffs and equipment, *ad infinitum.* It is difficult to see the constitutional distinction between

assigning children to schools of differing grade levels to achieve desegregation and such assignments as a consequence of normal school administrative procedures.

The board further contends that the court of appeals order denied due process under the Constitution. This argument has no more merit than the first. As the record in this case reflects, the district court received extensive information from not only the board, but also from H.E.W. experts and private plaintiffs with respect to desegregating the Broward County school system. In its final order, the district court rejected the H.E.W. recommendations for pairing and grouping the all-black elementary schools with nearly predominantly white schools because it did not favor the use of such techniques, not because they were infeasible or unworkable. In so doing, the court acted in conflict with this Court's holdings in *Green, supra.* The court of appeals, armed with extensive information on pairing and clustering and the fact of the lower court's error of law, was able to devise an effective desegregation plan relating solely to elementary schools. The other areas of concern which the district court evaluated and ruled on in accordance with *Green, supra,* were left untouched by the appellate court. And, as indicated above, crucial decisions on the arrangement of grade structures in the paired and grouped schools, which set of pairings and groupings would be appropriate for the last of three attendance areas (out of a list of six alternatives) and the extent to which the court of appeals plan should be modified or altered in the future were all left to the discretion of the district court on remand, based upon its experience, familiarity with local conditions, and ability to consult with board officials. According to this Court's strict instructions in *Alexander* v. *Holmes County Board of Education,* 396 U.S. 19 (1969) and *Carter* v. *West Feliciana Parish School Board,* 396 U.S. 290 (1970) dual

school systems were to be ended immediately, not later than February, 1970 in the *Carter* cases. The court of appeals in this case made an exemplary attempt to meet its constitutional responsibility, while at the same time permitting board officials and the district court to make whatever alterations were necessary in the desegregation plan without reducing the degree of disestablishment of the dual system its order achieved. Its action was in complete accord with the requirements of procedural due process. Insofar as petitioners in No. 749 seek review of the questions of racial balance and busing which they contend are raised by this record, this Court presently has before it two cases, *Swann* v. *Charlotte-Mecklenburg Board of Education,* Nos. 281 and 349, this Term, and *Davis* v. *Board of School Commissioners of Mobile County,* No. 436, this term, in which those issues have already been extensively briefed and argued. To the extent that decisions in those cases may affect the issues decided in this case, appropriate motions for supplemental relief or modification may be presented to the courts below.

II.

Petitioners in No. 891 present equal protection and due process arguments as well to support the contention that the lower courts erred in allowing Ely High School to be closed. On the matter of denial of equal protection, the Ely Parent Teachers Association has not presented evidence in any court that refutes the determination made by the board and an outside educational expert that Ely High School was an inadequate, inferior secondary school facility. Documents indicating Ely's accreditation and a three-year-old evaluation of its facilities established nothing with respect to the physical conditions at the high school. The record, therefore, reflects a sufficient educational, non-racial basis for the district court's decision to close Ely. Furthermore,

by closing Ely, the district court thereby increased the degree of desegregation in surrounding, physically superior high school facilities, which it was required to do under *Brown, supra* and *Green, supra.* With respect to the contention that the district court denied the Ely Parent Teachers Association due process of law, the record is also dispositive. First, the Association procrastinated an entire month, from March 3 to April 3, 1970, before actually filing a petition to intervene. April 3 was, of course, the date scheduled for final hearing in this matter. Second, the Association's evidence in support of its opposition to the closing of Ely was then and has always been documentary. That the district court refused to allow the Association to put on testimony in support of inconclusive documentary evidence cannot be regarded as a denial of due process. Finally, it is evident, especially in the petition itself (page 13) that what the Association seeks is the continuation of Ely High School at any cost, irrespective of whether the facility is desegregated, predominantly black or even all-black. The decisions of this Court precluded the district court and court of appeals from agreeing to the demands of the Association to keep Ely open even as an all-black facility.

Certainly the issue of black school closings as a consequence of the desegregation process presents constitutional questions, which on a record quite different from the one in this case, may have to be considered by this Court. See *Haney* v. *County Board of Education of Sevier County,* 429 F.2d 364 (8th Cir., 1970). Here, nothing in the record indicates that the court below or the district court acted arbitrarily or discriminatorily in ordering the closing of Ely High School.

CONCLUSION

For the foregoing reasons, the petitions in Nos. 749 and 891 for writs of certiorari should be denied.

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